DISCRETION TO PROSECUTE INQUIRY

COMMISSIONER'S REPORT

(Volume Two — Documents)

Stephen Owen
Inquiry Commissioner

November 1990

Province of British Columbia

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ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

DISCRETION TO
PROSECUTE INQUIRY

EXHIBIT # 1

DATE: May 4, 1990

RH

Order in Council No. 621 *, Approved and Ordered* APR. 18,1990

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

1. A commission be issued under Part 2 of the *Inquiry Act* appointing Stephen Douglas Owen as a sole commissioner to inquire into and report on or before June 30, 1990 on the matters set out in the Schedule to this order.

2. Consent is given to the sole commissioner to appoint clerks and stenographers as he considers necessary for conducting the inquiry, and to pay them at the rate or salary that is equivalent to the rate or salary paid to employees in similar positions in the public service.

3. To assist in achieving the objectives of the inquiry, the sole commissioner may appoint or retain research assistants and professional advisers as he considers appropriate.

4. The entitlement to reimbursement of travel related expenditures of the sole commissioner shall be equivalent to the entitlement to reimbursement of travel related expenditures as set out for Group III in Treasury Board Order 88, the entitlement to such reimbursement of persons appointed as retained pursuant to section 4 of this order shall be as set out for Group II of that order and the entitlement to such reimbursement of other employees of the commission of inquiry shall be equivalent to the entitlement of the other employees as set out for Group I in that order.

5. Subject to appropriation, approval is given to government to pay all expenses incurred by the sole commissioner in the inquiry and which are considered necessary by the sole commissioner for the proper carrying out of his duties.

Provincial Secretary

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Inquiry Act, sections 8 and 17

Other (specify):-

April 12, 1990

690 / 90/13/ejk

SCHEDULE

TERMS OF THE COMMISSION

The matters to be inquired into and reported on are the process and procedure followed by the Ministry of Attorney General in deciding that William E. Reid would not be prosecuted with respect to the awarding of a grant under the Growth and Opportunities B.C. Grants Program to the Semiahmoo House Society and, in particular, to inquire and report on:

(a) the correctness and adequacy of the process applied in making that decision;

(b) the objectiveness and good faith with which this process was applied;

(c) the presence, if any, of external influence affecting the outcome of the decision;

(d) the correctness of the Attorney General not to be involved, directly or indirectly, in the decision;

(e) the correctness of the general practice, followed in this case, of not publicly disclosing information and events that are considered in deciding not to prosecute a citizen;

(f) the integrity with which the decision was made.

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **1015** *, Approved and Ordered* JUN 29 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 1A
DATE: Aug 27/90

Lieutenant Governor

Executive Council Chambers, Victoria 27 JUN 1990

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that section 1 of Order in Council 621, approved and ordered April 18, 1990 is amended by deleting "on or before June 30, 1990".

Provincial Secretary

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Inquiry Act, sections 8 and 12

Other (specify):

June 28, 1990

/90/13/ja

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 1276 *, Approved and Ordered*

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 1 B
DATE: Aug 27/90
KH

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council orders that the Terms of Reference set out in the Schedule to order in council 621, approved and ordered April 18, 1990, be amended by the addition of the following paragraph:

"Further matters to be inquired into and reported on are

(a) the appropriateness of the Deputy Attorney General of British Columbia referring to the Deputy Attorney General of Alberta the issue of whether or not to prosecute Stuart (Bud) Smith, Q.C. on allegations of attempting to obstruct justice as a result of intercepted and recorded telephone conversations between Mr. Smith and others.

(b) the appropriateness of the Deputy Attorney General of British Columbia referring to the Deputy Attorney General of Alberta the issue of whether or not to prosecute persons on allegations of criminal conduct arising from the interception, recording and disclosure of certain telephone conversations; and

(c) the appropriateness of the Deputy Attorney General of British Columbia applying the criterion of public interest in deciding not to prosecute persons on the recommendation of the Deputy Attorney General of Alberta in response to the referral described in paragraph (b)."

Provincial Secretary

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Inquiry Act, sections 5 and 17

Other (specify):-

August 24, 1990

Lieutenant Governor

Canada
Province of British Columbia

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith

In the matter of the Inquiry Act

To STEPHEN DOUGLAS OWEN

WHEREAS His Honour the Lieutenant Governor, by and with the advice and consent of his Executive Council, has deemed it expedient to cause an inquiry to be made into a matter referred to in section 8 of the Inquiry Act;

AND has ordered that a Commission be issued under Part 2 of that Act appointing Stephen Douglas Owen of Victoria to be a Commissioner to enquire into and report on or before June 30, 1990, into the process and procedure followed by the Ministry of Attorney General in deciding that William E. Reid would not be prosecuted with respect to the awarding of a grant under the Growth and Opportunities B.C. Grants Program to the Semiahmoo House Society and in so doing to inquire particularly into and report on matters set out in Order in Council 621, approved and ordered April 18, 1990.

NOW KNOW YE THEREFORE, that reposing every trust and confidence in your loyalty, integrity and ability, We do by these presents and under and by virtue of the powers contained in the Inquiry Act, and in accordance with the Order of the Lieutenant Governor in Council issue this Commission by appointing you

STEPHEN DOUGLAS OWEN

a Commissioner to inquire into matters aforesaid and report your findings and recommendations to the Lieutenant Governor in Council.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Our Province to be hereunto affixed.

WITNESS The Honourable David C. Lam, Lieutenant Governor of Our Province of British Columbia, in Our City of Victoria, in Our Province, this eighteenth day of April, in the year of Our Lord one thousand nine hundred and ninety and in the thirty-ninth year of Our Reign.

BY COMMAND.

PROVINCIAL SECRETARY

000005 Bud Smith

ATTORNEY GENERAL

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 3
DATE: May 4, 1990

Province of British Columbia

I, STEPHEN D. OWEN
swear that I will truly and faithfully execute the powers and trusts vested in me by His Honour the Lieutenant Governor in Council, under the Inquiry Act, according to the best of my knowledge and judgement.

SO HELP ME GOD.

Stephen Owen
....
STEPHEN D. OWEN

SWORN and subscribed by the said STEPHEN D. OWEN at VANCOUVER, British Columbia, this 21st day of April, A.D. 1990, before me -

F. Maczko J.

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT 4.A
DATE May 4 1990
KDH

~~Yen, A., Vancouver.~~
~~Yeung, B., Surrey.~~
~~Yeung, E. Y. M., Vancouver.~~
~~Yeung, F. C. F., New Westminster.~~
~~Yeung, J. K. C., Vancouver.~~
~~Yeung, M. C. M., Vancouver.~~
~~Yick, J. K., Vancouver.~~
~~Yip, B., Vancouver.~~
~~Yip, G. G., Langley.~~
~~Yip, J. E., Delta.~~
~~Yip, R. T. K., Vancouver.~~
~~Yorshy, R. I., Vancouver.~~
~~Yoshida, Y. K., Vancouver.~~
~~Young, A. R., Burnaby.~~
~~Young, D. B., Prince George.~~
~~Young, J. H. C., Coquitlam.~~
~~Young, S. M. T., Richmond.~~
~~Yn, R. A., Delta.~~
~~Yu, A. T. Y., Vancouver.~~
~~Yu, D. K. Y., Surrey.~~
~~Yu, G. T., Vancouver.~~
~~Yu, P. K. W., Vancouver.~~
~~Yu, S. G., Delta.~~
~~Yue, C. S., Calgary.~~
~~Yuen, S. W., Vancouver.~~
~~Yule, A. J., Burnaby.~~
~~Zaparinuk, D. J., Victoria.~~
~~Zaparinuk, J. C., Victoria.~~
~~Zarikoff, D. P., Nelson.~~
~~Zens, P. W., Port Alberni.~~
~~Zens, P. K., Port Alberni.~~
~~Zimukas, W. B., Victoria.~~
~~Zokol, J. F., Vancouver.~~
~~Zokol, R. J., Vancouver.~~
~~Zucchiatti, J. D., Terrace.~~
~~Zysko, E. M., Ft. McMurray.~~
~~[ap26 — 77790]~~

MINISTRY OF PROVINCIAL SECRETARY

ORDER IN COUNCIL

Order in Council 621, approved and ordered April 15, 1990.

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that:

1. A commission be issued under Part 2 of the *Inquiry Act* appointing Stephen Douglas Owen as a sole commissioner to inquire into and report on or before June 30, 1990 on the matters set out in the Schedule to this order.:

2. Consent is given to the sole commissioner to appoint clerks and stenographers as he considers necessary for conducting the inquiry, and to pay them at the rate or salary that is equivalent to the rate or salary paid to employees in similar positions in the public service.

3. To assist in achieving the objectives of the inquiry, the sole commissioner may appoint or retain research assistants and professional advisers as he considers appropriate.

4. The entitlement to reimbursement of travel related expenditures of the sole commissioner shall be equivalent to the entitlement to reimbursement of travel related expenditures as set out for Group III in Treasury Board Order 55, the entitlement to such reimbursement of persons appointed as retained pursuant to section 4 of this order shall be as set out for Group II of that order and the entitlement to such reimbursement of other employees of the commission of inquiry shall be equivalent to the entitlement of the other employees as set out for Group I in that order.

5. Subject to appropriation, approval is given to government to pay all expenses incurred by the sole commissioner in the inquiry and which are considered necessary by the sole commissioner for the proper carrying out of his duties.

SCHEDULE

TERMS OF THE COMMISSION

The matters to be inquired into and reported on are the process and procedure followed by the Ministry of Attorney General in deciding that William E. Reid would not be prosecuted with respect to the awarding of a grant under the Growth and Opportunities B.C. Grants Program to the Semiahmoo House Society and, in particular, to inquire and report on:

(a) the correctness and adequacy of the process applied in making that decision;

(b) the objectiveness and good faith with which this process was applied;

(c) the presence, if any, of external influence affecting the outcome of the decision;

(d) the correctness of the Attorney General not to be involved, directly or indirectly, in the decision;

(e) the correctness of the general practice, followed in this case, of not publicly disclosing information and events that are considered in deciding not to prosecute a citizen;

(f) the integrity with which the decision was made.

— Howard Dirks, *Provincial Secretary;* William N. Vander Zalm, *Presiding Member of the Executive Council.* [ap26 — 77829]

NOTICE OF MEETINGS

The commission issued by Order in Council 621 appointing Stephen Douglas Owen as a sole commissioner will meet as follows:

First Hearing

The commission's first hearing will be Friday, May 04, 1990, Century Plaza Hotel, 1015 Burrard Street, Vancouver, B.C., at 9 a.m.

Subsequent hearings are scheduled for May 22, 23, 24, 25 and June 04 and 05, 1990.

Participation of Interested Parties

At the May 04 hearing the commissioner will hear oral submissions, personally or through counsel, from persons who seek status as official participants in the hearings. The commissioner may grant status to persons who have a direct interest in the commission's proceedings.

Any person intending to apply for status as an official participant must notify the commission secretary, in writing, by Wednesday, May 02, 1990.

Written Submissions

The commission invites any person to make a submission in writing, on any issue relevant to the terms of the commission set out above. Written submissions must be received by Friday, May 11, 1990. The commissioner may request some people who have made written submissions to elaborate orally at the hearings. Discretion to Prosecute Inquiry, 202, 1275 West Sixth Avenue, Vancouver, B.C. V6H 1A6. Telephone: 660-1536. Fax: 660-1691. — Stephen D. Owen, *Commissioner.* Keith R. Hamilton, *Secretary.* [ap26 — 77829]

~~MINISTRY OF TRANSPORTATION AND HIGHWAYS~~

~~HIGHWAY TENDER~~

~~In accordance with the *Ministry of Transportation and Highways Act,* section 49 (1), sealed tenders are invited for the following:~~

~~Project: B-5381 — Location: Highway 5 and Highway 1, located at Heffley Creek, B.C.~~

~~Description: Installation of retaining walls, bridge end fills and a single-span prestressed concrete stringer bridge 26 metres long, supported on spread footings.~~

~~Sealed tenders, completed in accordance with the Conditions of Tender on the forms provided, will be received by the Ministry of Transportation and Highways at 940 Blanshard Street, Victoria, B.C. V8W 3E6, until 2 p.m. (local time), on May 01, 1990, when tenders will be opened in public.~~

~~A security deposit/surety bid bond will be required (in accordance with the conditions of the tender).~~

~~A pre-tender meeting has not been scheduled.~~

~~Tender documents complete with envelope, plans, specifications and conditions of tender are available for $35 per set and $25 extra for full-size from the Ministry of Transportation and Highways, Contract Administration, 5c, 940 Blanshard Street, Victoria, B.C., telephone 387-1411 and Contract Documents, 7818 Sixth Street, Burnaby, B.C. V3N 4N8, telephone 660-8260, between the hours of 8:30 a.m. to 12 p.m., and 1 p.m. to 4:30 p.m., Monday to Friday, except holidays.~~

~~Where required, payment for contract documentation shall be made by certified cheque or money order, made payable to the Minister of Finance and Corporate Relations. All purchases are non-refundable.~~

~~For further information contact Contract Standards Engineer, telephone (604) 387-7732~~

~~The lowest or any tender will not necessarily be accepted. [ap26 — 77806]~~

~~HIGHWAY TENDER~~

~~In accordance with the *Ministry of Transportation and Highways Act,* section 49 (1), sealed tenders are invited for the following:~~

~~Project: O-7078 — Location: Highway 28 near Gold River, B.C.~~

~~Description: Redecking five structures, remove old existing asphalt from treated~~

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 4B
May 4.1990

KDH

DISCRETION TO PROSECUTE INQUIRY

Notice of Public Hearing

Appointment of Commission

On April 19 the Government of the Province of British Columbia, by Order in Council No. 621/90, appointed Stephen Douglas Owen as a sole commissioner to inquire into and report, by June 30, 1990, on the process and procedure followed by the Ministry of Attorney General in deciding that William E. Reid would not be prosecuted with respect to the awarding of a grant under the Growth and Opportunities B.C. Grants Program to the Semiahmoo House Society.

Terms of the Commission

The Terms of the Commission are, in particular, to inquire into and report on:

1. the correctness and adequacy of the process applied in making that decision,
2. the objectivity and good faith with which this process was applied,
3. the presence, if any, of external influence affecting the outcome of the decision,
4. the correctness of the Attorney General not to be involved, directly or indirectly, in the decision,
5. the correctness of the general practice, followed in this case, of not publicly disclosing information and events that are considered in deciding not to prosecute a citizen, and
6. the integrity with which the decision was made.

First Hearing

The Commission's first hearing will be:

Friday, May 4, 1990
Century Plaza Hotel
1015 Burrard Street
Vancouver, B.C.
9:00 a.m.

Subsequent hearings are scheduled for May 22, 23, 24, 25 and June 4 and 5, 1990.

Participation of Interested Parties

At the May 4 hearing the Commissioner will hear oral submissions, personally or through counsel, from persons who seek status as official participants in the hearings. The Commissioner may grant status to persons who have a direct interest in the Commission's proceedings.

Any person intending to apply for status as an official participant must notify the Commission Secretary, in writing, by Wednesday, May 2, 1990.

Written Submissions

The Commission invites any person to make a submission in writing, on any issue relevant to the Terms of the Commission set out above. Written submissions must be received by Friday, May 11, 1990. The Commissioner may request some people who have made written submissions to elaborate orally at the hearings.

Province of
British Columbia

Discretion to Prosecute Inquiry
c/o 202—1275 West 6th Avenue
Vancouver, B.C. V6H 1A6
Telephone: 660-1536
Fax: 660-1691

Stephen D. Owen, Commissioner
Keith R. Hamilton, Secretary

treats the languages of the people it rules is just one indication of its attitudes to those people. If it ignores linguistic rights, as often as not it is because it has not recognized those people as equal."

De Brun said the censorship imposed by the ban shows that while the British government says dialogue is a "way forward," Prime Minister Margaret Thatcher really doesn't want to listen to Sinn Fein — and doesn't want anyone else to either.

Sinn Fein is the legal, political wing of the Irish Republican Army. Since 1988 the British government has banned British broadcasters from transmitting the views of 11 Irish organizations, including Sinn Fein.

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DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT #: 4 C
DATE: May 4. 1990 KDt

WOMEN FORCED TO BARE LEGS

United Press International

MONTEVIDEO, Uruguay — A new rule preventing women legislators from wearing pants has been defended by Uruguayan Vice-President Gonzalo Aguirre, despite charges of sexism.

"These are rules that are necessary to preserve the good customs and ethics of the parliament," Aguirre said.

The vice-president, who presides over the Senate chamber, recently touched off a fiery debate when he prohibited women legislators from wearing pants while carrying out official functions, and restricted men to coats and ties.

"Several functionaries came to parliament several times dressed in a manner much too informal. I felt I had to put an end to the situation."

Aguirre took office March 1 with the inauguration of President Luis Alberto Lacalle.

Aguirre, 50, further ruled that legislators could drink only tea or coffee in the legislature. The decision prohibits representatives from sipping the national drink, a herbal brew called yerba mate, traditionally served in a gourd.

Offices where mate was drunk were frequently littered with the wet, used green paste of the leaves.

Senators and deputies from different political parties were unanimous in criticizing the measures as "excessive" and "inopportune."

His dress code has Uruguayan feminist groups up in arms over what they call the infringement on "the right to freely dress."

"Who wears the pants in this parliament?" asked prominent feminist Carina Gobbi in a newspaper article. She encouraged women legislators to wear "short pants, under a straight pleated skirt," a recent fashion look.

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DISCRETION TO PROSECUTE INQUIRY

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Written Submissions

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Province of British Columbia

Discretion to Prosecute Inquiry
c/o 202 — 1275 West 6th Avenue
Vancouver, B.C. V6H 1A6
Telephone: 660-1536
Fax: 660-1691

Stephen D. Owen, Commissioner
Keith R. Hamilton, Secretary

4D

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 4D
DATE: May 4, 1990

DISCRETION TO PROSECUTE INQUIRY

Notice of Public Hearing

Appointment of Commission

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Written Submissions

The Commission invites any person to make a submission in writing, on any issue relevant to the Terms of the Commission set out above. Written submissions must be received by **Friday, May 11, 1990.** The Commissioner may request some people who have made written submissions to elaborate orally at the hearings.

Province of
British Columbia

Discretion to Prosecute Inquiry
c/o 202 — 1275 West 6th Avenue
Vancouver, B.C. V6H 1A6
Telephone: 660-1536
Fax: 660-1691

Stephen D. Owen, Commissioner
Keith R. Hamilton, Secretary

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 4 E
DATE: May 4, 1990
KAH

NEWS RELEASE

From: Discretion to Prosecute Inquiry

Contact: Keith Hamilton, Vancouver, Tel: 660-1536

The commission inquiring into the Attorney General's decision not to prosecute former B.C. Tourism Minister Bill Reid today announced a series of public meetings to hear submissions on the matter.

The Discretion to Prosecute Inquiry was appointed by the provincial government on April 19 with Stephen Owen as sole commissioner.

The inquiry is to report by June 30 on the process and procedure followed by the Ministry of the Attorney General in deciding that Reid would not be prosecuted for awarding a grant to the Semiahmoo House Society under the Growth and Opportunities B.C. grants program.

A pre-hearing is scheduled for 9 a.m. Friday, May 4 in the Century Plaza Hotel, 1015 Burrard Street in Vancouver, at which time the commissioner will hear oral submissions, personally or through counsel, from people seeking status as official participants in the hearings. Anyone who intends to apply for status as an official participant must notify the commissioner in writing by Wednesday, May 2.

Subsequent hearings are scheduled for May 22, 23, 24, 25 and June 4 and 5.

In addition, the commissioner said he would welcome written submissions relevant to the terms of the commission from anyone. Written submissions must be received by Friday, May 11.

(more)

CPA/90-25-013

The terms of the commission are to inquire into and report on:

- the correctness and adequacy of the process applied in making the decision not to prosecute the former minister.
- the objectivity and good faith with which this process was applied.
- the presence, if any, of external influence affecting the outcome of the decision.
- the correctness of the Attorney General not to be involved, directly or indirectly, in the decision.
- the correctness of the general practice, followed in this case, of not publicly disclosing information and events that are considered in deciding not to prosecute a citizen, and
- the integrity with which the decision was made.

Applications for participant status and written submissions should be made to the Discretion to Prosecute Inquiry, c/o 202-1275 West Sixth Avenue, Vancouver, B.C. V6H 1A6. Fax number: 660-1691.

- 30 -

April 25, 1990

CPA/90-25-013

Province of British Columbia
OFFICE OF THE ASSISTANT DEPUTY ATTORNEY GENERAL

Ministry of Attorney General
CRIMINAL JUSTICE BRANCH

MEMORANDUM

DISCRETION TO PROSECUTE INQUIRY
EXHIBIT #: 5
DATE: May 4, 1990

Third Floor, Harbour Square, 910 Government Street, Victoria, British Columbia V8V 1X4 Telephone. (604) 387-[illegible]

December 11, 1989

Mr. Robert H. Wright, Q.C.
Regional Crown Counsel
Region Two - Vancouver

File

Re: **Investigation into the Activities of Bill Reed, MLA**

I have been advised that a report to Crown Counsel concerning allegations into Mr. Reed's activities will be forwarded to you sometime within the next two weeks. Mr. Hughes, Q.C., and I would like to discuss this file with you prior to any decision being made concerning the laying of any charges.

I look forward to hearing from you once you have received the report.

W F Stewart

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

WFS/vy

Province of
British Columbia

Ministry of
Attorney General
REGIONAL CROWN COUNSEL

MEMORANDUM

307, 815 Hornby Street, Vancouver, British Columbia V6Z 2E6 Telephone: (604) 660-4100 Facsimile: (604) 660-4198

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 6
DATE May 4, 1990

December 13, 1989

BY FAX

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

Re: Investigation into the activities of Bill Reid, MLA

I have for acknowledgement your faxed memorandum of December 11, 1989.

On Tuesday, December 12, 1989, I met for the first time with Inspector E.C. MacAulay of the Vancouver Commercial Crime Section of the Royal Canadian Mounted Police concerning the above noted investigation.

Inspector MacAulay has provided to me preliminary material along with his view that the investigation does reveal criminal acts committed by Mr. Reid and two associates. I have discussed with Inspector MacAulay the need for additional investigation which he will carry out in the coming days. I should be in a position to provide you with a outline of this situation by the end of this week.

I await your further instructions.

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 7
DATE: May 9, 1990
KDH

From the Office
of the
Deputy Attorney General

CONFIDENTIAL

Dec 13 89

Courier to Bob Wright
"Conf."

From: [illegible] [illegible]

Re - Ltr [illegible] [illegible]
today.

CONFIDENTIAL

Province of British Columbia
Ministry of Finance and
Corporate Relations

SPECIAL REPORT

A Report by the Comptroller General on Growth and Opportunities BC Grants to the Semiahmoo House Society and Administration of the GO BC Program

Office of the
Comptroller General

Province of British Columbia

COMPTROLLER GENERAL

Ministry of
Finance and
Corporate Relations

Office of the
Comptroller General
Parliament Buildings
Victoria
British Columbia
V8V 4R8

December 12, 1989

Honourable Howard Dirks
Provincial Secretary
Province of British Columbia
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Sir:

In response to the request of September 26, 1989, from the Honourable Claude Richmond, Acting Minister of Tourism and Provincial Secretary, I submit this Report on my investigation of the Growth and Opportunities B.C. Grants made to the Semiahmoo House Society, and my review of the administration of the GO B.C. program.

Yours sincerely,

D. Brian Marson
Comptroller General

Attachment

INTRODUCTION

On September 26, 1989, the Honourable Claude Richmond, Acting Minister of Tourism and Provincial Secretary requested that I review two aspects of the Growth and Opportunities B.C. (GO B.C.) grant program. His first request was for an investigation into allegations of irregularities and improprieties with respect to GO B.C. grants paid to the Semiahmoo House Society under the authority of the former Minister of Tourism and Provincial Secretary, Mr. Bill Reid. His second request was for a comprehensive review and evaluation of the GO B.C. grant program. Mr. Richmond's letter to me of September 26,1989, is attached as Appendix I.

My investigation is now complete, and this is my report containing my conclusions and recommendations.

During the investigation I exercised the powers of inquiry given to me under section 7 of the Financial Administration Act to take evidence under oath as authorized by the Chairman of Treasury Board, also on September 26,1989, (Appendix II). I engaged the services of Mr. David Hooper, C.A. from the national accounting firm Ernst & Young, to ensure a strong element of external independence in the investigation. Mr. Hooper, who is a recognized expert in forensic accounting reinforced the resources provided by my own Internal Audit Branch. I also engaged Mr. A.G. Henderson of Davis & Company as counsel to my inquiry. He provided witness examination expertise during the inquiry. The evidence provided by witnesses under oath was recorded by a court reporter. Fifty-eight exhibits were taken into evidence.

Staff of my Internal Audit Branch carried out the review and evaluation of the GO B.C. program, and assisted Mr. Hooper with the investigation of the grant to Semiahmoo House Society.

THE GO B.C. GRANT PROGRAM

In October, 1988 the Government announced a new, three and a half year, $162 million program called Growth and Opportunities (GO) B.C. Its purpose is to enrich the quality of life of British Columbians and to build on the strong feeling of pride in B.C. communities by supporting social, cultural, environmental, recreational, health and economic projects in local communities. Grants are made from the Lottery Fund to provide financial assistance for a broad range of projects which reflect local priorities.

The program guidelines, as published in a GO B.C. brochure, are:

- funding available to a normal level of one third of a project's total costs to a maximum of $1 million;
- funding available for one-time capital costs but not for operating costs;
- applicants must have secured ongoing operating funding;
- projects eligible for assistance from established special-purpose capital funding programs are not eligible;
- projects that have received Expo legacy or Jobtrac funding would not be automatically disqualified;
- applicants must provide a financial plan for the project; and
- funds to be paid in installments, one third when the contract is let or work done, one third when the project is half complete, and the final one third on completion and following submission of an audited statement of expenditures.

FINDINGS

GRANT TO SEMIAHMOO HOUSE SOCIETY FOR A MULTI-MATERIAL RECYCLING PROJECT

The Parties Directly Involved in the $277,065 Grant to the Semiahmoo House Society

Mr. Bill Reid, former Minister of Tourism and Provincial Secretary, (the Minister) was the Minister responsible for the program and gave final approval for all grants made under it.

Mr. Hans Schinz (Schinz), Ministerial Assistant to the Minister, who represented the Minister at one meeting, and acted as a conduit for the flow of some information and documentation.

Mr. Peter Martin (Martin), Executive Director Public Programs, who is the administrator of the GO B.C. grant program.

Mr. Peter Laipnieks (Laipnieks), who is a manager for the British Columbia Purchasing Commission, and is responsible for supplier development in the Lower Mainland Region.

Semiahmoo House Society (the Society), incorporated under the Society Act to provide residential care and employment programs for the mentally disabled. The Society provides a contracted paper recycling service for the City of White Rock. The Society is run by a Board of Directors who give direction to the Executive Director, Ms. Alanna Hendren (Hendren).

ECO-Clean Waste Systems Ltd. (ECO-Clean), incorporated under the Company Act on July 14, 1989, and owned by Mrs. George Doonan. The principal operatives of the company are Mr. George Doonan (Doonan), and Mr. William Sullivan (Sullivan). Doonan acted as Mr. Reid's campaign manager in the 1986 election and is a personal friend, but has no other business associations with him. Sullivan has a very close personal relationship with a member of Mr. Reid's family and a long standing friendship with Mr. Reid. He has no documented business connection with Mr. Reid, except for an option which he once held on Mr. Reid's automobile dealership property for land development purposes.

The City of White Rock (The City), which was the original applicant for a GO B.C. grant to enable them to enter into a multi-material recycling program. Mr. Gordon Hogg (Hogg), is the Mayor of White Rock, Mr. Wayne Baldwin (Baldwin), is the City Administrator, and Mr. Robert Gascoyne (Gascoyne), is the City Engineer.

Also attached for the record as Appendix IV, is a chronology of the events leading to the grant payment made to the Society. This chronology was prepared from the evidence presented to me under oath during the inquiry.

The Investigation Process

All of the people who played a direct part in the grant application, its administrative processing, any meetings to discuss its multi-material recycling implications, the decision to make a grant, and the presentation of the cheque were interviewed by members of the review team. In addition, interviews were held with others who had knowledge of the grant, in order to corroborate and cross-reference the evidence obtained.

Following the audit interviews, all of the people noted above were questioned under oath.

The investigating team made an extensive review of the documentation supporting the grant application and approval. They also searched for other documentation that would shed light on the way in which the grant was made, and the interrelationship of the key proponents. Witnesses were asked by subpoena to produce any relevant documents in their possession.

Conclusions

I have concluded that the grant of $277,065 to the Society approved by the Minister, was both irregular in relation to normal program guidelines, and improper, because of the close and undisclosed relationship of the Minister with the principals of ECO-Clean, and the manner in which a $50,000 contribution to the capital costs of ECO-Clean was made. This conclusion is consistent with the report dated December 6, 1989, from Mr. Hooper of Ernst and Young. Mr. Hooper's report is reproduced as Appendix III.

Irregularities include the decision by the Minister to make a grant to the Society, even though they had not formally applied for one. The decisions to exceed normal funding guidelines and payment terms, and to make the grant conditional upon ECO-Clean being the supplier of the equipment were also irregular. I also note that ECO-Clean was not officially registered as a company until after the grant was made to the Semiahmoo House Society.

Evidence presented at the inquiry indicated that the Minister was concerned that delays to the project would hinder its success. This concern may have prompted a suggestion from Martin to the Minister that delay could be avoided by awarding the grant to a non-governmental organization such as the Society, which had no requirement for public tender for goods or services, as did the City. The evidence also suggests that the Minister and Martin discussed "premium pricing" the bins to include initial start-up costs incurred by the supplier of the three-bin system. Although the date of these discussions is not certain, it is probable that at this time the Minister knew of the ECO-Clean request for a $50,000 capital contribution for this purpose.

The evidence suggests that the Minister had an unusually high degree of personal involvement in arranging this grant. The administrators of the GO B.C. program in the Ministry of Tourism and Provincial Secretary did not receive all the documentation until after the grant was made. Throughout the inquiry it was clear that no one but the Minister knew the full scope or detail of his plans for a multi-material recycling project for the Semiahmoo Peninsula. I received no evidence which would suggest that the Minister had brought together all the parties to the project, to discuss its structure or implementation before the grant was made.

The relationship between the Minister and the principals of ECO-Clean was not at arms-length. Doonan was the Minister's campaign manager in the 1986 election; Sullivan has been a close friend of Mr. Reid for about twenty years, and has a close relationship with Mr. Reid's daughter. These close personal relationships were not disclosed by the Minister to his officials or to the other parties during the decision making process. The Minister seemed to be unaware of, or chose to disregard, any impropriety in his dealings with Doonan and Sullivan on these matters. Furthermore, no administrative controls were in place within the Ministry to provide the checks and balances necessary to ensure that the Minister would exercise his discretionary powers under the GO B.C. Program in a prudent manner, particularly in a situation such as this. It is my view that had these controls been in place, this grant would not have been made in the manner it was.

The inquiry was told that at least $50,000 was included by Mr. Reid in the price of the bins to be purchased from ECO-Clean to assist in the purchase of a mould by that company. Such treatment is, in my mind, improper. It was Doonan and Sullivan's objective that the three bin system be designated by the provincial government as the "system of choice" for all municipalities receiving recycling grants. If the grant had proceeded as approved, ECO-Clean would have been put in the position of being the sole B.C. supplier of the bins required for the three bin stackable system for municipalities in the Province, for an initial period at least. $50,000 of the capital cost of the production mould would have been paid by the Province. Moreover, since there was no written agreement between the government and ECO-Clean, if ECO-Clean chose to buy bins in the U.S. or offshore, rather than manufacture bins in British Columbia, the $50,000 would have become a windfall gain for ECO-Clean.

Recommendations

As a result of my investigation, I recommend that:

i) the remaining portion of the approved grant to the Society be withheld;

ii) the government initiate action to recover the portion of the grant paid to the Society, and by them to ECO-Clean, that is currently in a trust account held by ECO-Clean's lawyer; and

iii) the City of White Rock's application for a GO B.C. grant be reopened, revised, and given a full review in consultation with City officials.

GRANT TO THE SEMIAHMOO HOUSE SOCIETY FOR THE PURCHASE OF COMPUTERS

Regarding the grant of $23,112.05 to the Society for computers, I have concluded that it was irregular in relation to normal program guidelines. The Minister approved 100% of the project costs rather than the usual 1/3 allowed by the guidelines. The application submitted by the Society indicated that they were requesting only 1/3 of the total cost or $7,704.02. The Society was surprised to receive the full amount.

Although I do not consider the computer grant award to be improper, I find it unusual that this grant was announced at the White Rock Council meeting, at the same time as the $277,065 grant for the recycling project. That there was confusion as to the beneficiary of the $277,065 was evident from the testimony given at the inquiry. The coincidental announcement of the computer grant at the City Council meeting, and the larger grant for the recycling project, contributed to the confusion surrounding the fact that the grant which had been applied for by the City was to be paid to the Society.

GO B.C. GRANT PROGRAM ADMINISTRATION

From my review of the Go B.C. program I have the following observations.

My Internal Audit Branch has reviewed the GO B.C. grant file for each grant authorized by the former Minister, Mr. Reid. During this period 208 grants, totalling $35,375,286 were approved.

The auditors' review showed that on many occasions the former Minister exercised his broad discretionary powers to award grants which did not meet published program guidelines. However, no further cases of impropriety were identified by the audit.

The objectives of the GO B.C. program are to provide funding to as wide a range of community improvement projects as possible. Although program guidelines exist, there is a large degree of ministerial discretion as to what projects are funded, their purposes, and choice of the organizations sponsoring the initiatives.

Conclusions

I have concluded that even though several of the grants authorized went beyond the funding guidelines, no other grants awarded by the Minister appeared to be improper.

It is evident from my review of the program that its desired program flexibility must be balanced by much stronger controls. These stronger controls are essential to assure fair and consistent treatment of all applications, and to ensure that public money is disbursed in a manner which meets the standards of financial management which flow from the Financial Administration Act.

Recommendations

Under the program the Minister was solely responsible for approving the grants. As Mr. Reid stated in his sworn testimony, this is too great a responsibility for one person. The Lottery Act seems to anticipate this problem, as section 3 provides for a Lottery Advisory Committee established by the Lieutenant Governor in Council.

I recommend that the Lottery Act and government procedures be amended to require a Committee of Ministers to approve Lottery Grants in excess of a stated amount in the same way that Treasury Board approves other government grants. Grants below the stated amount could continue to be approved by the Minister but all grants should be the subject of review, evaluation and recommendation by sufficient and appropriately qualified staff in the Lottery Branch. Evaluation criteria should be broad enough to maintain program flexibility, while sufficiently defined to ensure effective control over the expenditure of public funds.

There are some basic requirements needed to properly administer any program that involves paying out money from the public purse. My review has shown that, in some cases, even essential documentation, such as an application form signed by the person seeking a grant, was missing.

I recommend that essential documentation be identified and that no grant be paid without those documents having been completed, approved and filed with the grant administrators.

My investigation also revealed that the Minister dealt directly with the GO B.C. program's Executive Director on all grant approvals. This had the effect of by-passing both the Deputy Minister and the Assistant Deputy Minister. This appears to be the case with all the Lottery Grant programs. The $162 million provided for the GO B.C. program is in excess of three times the 1989 fiscal year budget of the Ministry of Tourism and Provincial Secretary.

It is inconsistent with Treasury Board Policy for the Deputy Minister, as the senior official accountable for the ministry's system for financial administration, and for the Assistant Deputy Minister, not to be fully involved in the lottery grant programs. They should be responsible and accountable for ensuring effective financial management and control with regard to these lottery program funds in the same way as they are accountable for other ministry programs.

I further recommend that the Deputy Minister and the Assistant Deputy Minister be fully involved in, and be accountable for, all lottery grant programs.

My investigation revealed that a verbal condition of the grant to Semiahmoo House Society established by Mr. Reid was that ECO-Clean must be used as the supplier of the recycling truck, bins and litter bins.

I recommend that a condition of GO B.C. grants be that major purchases by recipient organizations be made by a competitive bidding process.

I further recommend that Cabinet approve a strengthened set of GO B.C. program guidelines.

I would like to express my thanks to Mr. Reid and to all those who were involved in this investigation as witnesses. Their cooperation in attending the hearings and in providing evidence to the inquiry was most appreciated.

Province of
British Columbia

OFFICE OF THE
MINISTER

Ministry of
Tourism and
Provincial Secretary

Parliament Buildings
Victoria
British Columbia
V8V 1X4

APPENDIX I

September 26, 1989

Mr. D.B. Marson
Comptroller General
Ministry of Finance and
  Corporate Relations
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Mr. Marson:

I am writing to request that you undertake an immediate investigation into allegations of irregularities and improprieties with respect to the Growth and Opportunities B.C. grants provided to the Semiahmoo House Society under the authority of the former Minister of Tourism and Provincial Secretary, Mr. Bill Reid. I also request that you investigate and examine, at your discretion, any other grants authorized and paid since the inception of the Growth and Opportunities B.C. program, as you may determine warrant your attention and investigation.

Upon completion, I request that you submit a report to me outlining your findings and conclusions, and in particular, report any evidence of irregularity, impropriety or illegality in the authorization, disbursement, or application of the grants paid to the Semiahmoo House Society, or any other grant which you have determined required your investigation or examination.

In addition, I request that you conduct a comprehensive review and evaluation of the Growth and Opportunities B.C. grant program and report to me. Your report should state whether, in your opinion, the program is being administered with due regard to sound principles of financial management and in accordance with the governing legislation, policies, practices and procedures of the Province of B.C.

.../2

Mr. D.B. Marson
Page 2
September 26, 1989

In reporting your observations and conclusions, I would also appreciate it if you would bring forward any recommendations for improvements or corrective action that you may have.

Your cooperation and assistance in this matter is appreciated.

Yours truly,

Claude Richmond

Claude Richmond
Minister

cc: Honourable Mel Couvelier
Chairman
Treasury Board

Province of
British Columbia

Ministry of
Finance and
Corporate Relations

Treasury Board
Parliament Buildings
Victoria
British Columbia
V8V 1X4

APPENDIX II

September 26, 1989

Mr. D. Brian Marson
Comptroller General
Ministry of Finance and
Corporate Relations
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Mr. Marson:

Re: GO B.C. Investigation

In accordance with its' powers, set out in Section 4 of the Financial Administration Act, Treasury Board directs you to evaluate the management practices; financial management and control; economy, efficiency and effectiveness of the GO B.C. program of the Ministry of Tourism and Provincial Secretary.

Further, Treasury Board directs you to investigate and report on the GO B.C. grant paid to the Semiahmoo House Society.

You are authorized by Treasury Board to employ the powers accorded you under Section 7(2) of the Financial Administration Act, as you deem them necessary in your examination of the matters noted above.

The evaluation and the investigation are to be conducted, and the reports prepared, in accordance with the scope and mandate authorized by the Honourable Claude Richmond, Acting Minister of Tourism and Provincial Secretary.

Yours truly,

Mel Couvelier
Chairman

cc: Honourable Claude Richmond
Acting Minister of Tourism
and Provincial Secretary

APPENDIX III

Ernst & Young

FOR 125 YEARS CLARKSON GORDON IN CANADA

P O Box [illegible] Pacific Centre
700 West Georgia Street
Vancouver Canada [illegible]
Telephone (604) 683 [illegible]
Telex 04-55143
Fax (604) 643-5422

December 6, 1989

Mr. Brian Marson
Comptroller General of British Columbia
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Marson:

Pursuant to an agreement dated 26th day of September 1989 between Her Majesty the Queen in Right of the Province of British Columbia and Clarkson Gordon (now Ernst & Young), Chartered Accountants, you have engaged me to undertake an investigation into alleged improprieties and irregularities in the provision of grants under the Growth and Opportunities B.C. Program ("GO B.C.).

Specifically, you have requested that I determine the circumstances surrounding the approval of a Growth and Opportunities B.C. Grant to Semiahmoo House Society ("Semiahmoo") in the amount of $277,065 for a multi-material waste recycling program.

I have completed the investigation into this matter and report as follows.

CONCLUSION

In my opinion the grant of $277,065 to Semiahmoo was approved by the Minister of Tourism and Provincial Secretary, the Hon. William Reid ("the Minister"), in an irregular manner that was a departure from the guidelines that had been established for the issuance of Growth and Opportunities B.C. Grants.

It is my further opinion that the Minister's actions and unusual degree of personal involvement in making this grant to Semiahmoo were improper in view of the facts that:

- Semiahmoo did not make a formal or proper application for funds.
- Semiahmoo was instructed to direct the funds to a company controlled by two personal friends of the Minister.
- The grant included an undisclosed amount of $50,000 to enable the company to purchase capital assets.

PROCEDURES

Upon confirmation of my engagement I met with officials of the Internal Audit Branch, Office of the Comptroller General, to plan and allocate the work required to be done.

The Internal Audit staff investigated the procedures and controls relating to the GO B.C. program. I restricted my investigation to the circumstances surrounding the grant to Semiahmoo.

In cooperation with Mr. Gary Hepburn (Executive Director of Internal Audit) and Mr. Gerry Payne (Director of Operations, Internal Audit), I interviewed staff and officials from the City of White Rock ("White Rock"), the Ministry of Tourism and Provincial Secretary, the Purchasing Commission for the Province of British Columbia ("Purchasing Commission"), Semiahmoo, ECO-Clean Waste Systems Ltd. ("ECO-Clean"), and Columbia Plastics Ltd. ("Columbia"). Most of the persons interviewed were subsequently examined under oath at hearings in the matter of an Inquiry by the Comptroller General relating to the financial administration of the Growth and Opportunities B.C. Program.

FINDINGS

White Rock prepared an application for a GO B.C. Grant for a multi-material recycling program on March 9, 1989. The application showed an estimated total cost of $164,700 for the project and a request for GO B.C. funding in the amount of $95,700. This application was reviewed by the Minister on March 21, 1989 and discussed by him with Mr. Gordon Hogg ("Hogg"), the Mayor of White Rock, on March 23, 1989.

Mr. George Doonan ("Doonan"), who was the Minister's campaign manager during the 1986 Provincial Election, and Mr. Bill Sullivan ("Sullivan"), who was a close friend of the Minister and of the Minister's daughter, discussed over lunch on March 12, 1989 the possibility of entering the waste recycling business.

On April 4, 1989, Doonan and Sullivan met with Mr. Scott Wood of Ropak Capilano, New Westminster, B.C., to discuss the fabrication of a mould to manufacture plastic recycling containers. Ropak Capilano was a proprietary manufacturer, that is they wanted to retain ownership of any mould that was developed. This was not satisfactory to Doonan and Sullivan as they wanted ownership of the mould. They therefore had meetings the following month with Columbia of Surrey, B.C., who are custom manufacturers of plastic products, to discuss the fabrication of a mould.

Doonan and Sullivan had obtained a sample of a recycling bin that was manufactured in the United States. These bins, similar to plastic milk crates, were designed to be stacked on top of each other. Gaps in the side would enable the householder to place different types of material in each bin. These types of bins were in use in San Jose, California and Bellingham, Washington.

On April 15, 1989, Doonan and Sullivan met with the Minister in his White Rock constituency office to discuss recycling. At this stage Doonan and Sullivan had an idea and little else. They requested the Minister's assistance in arranging a meeting with Provincial Government officials to promote their idea.

On May 15, 1989 Jarie Holdings Ltd., Doonan's wife's company, whose name was changed on July 14, 1989 to ECO-Clean, received a quotation from Columbia of $84,500 for the manufacture of a mould based on the sample provided. The quotation also provided prices for the manufacture of the bins ranging from $5.45 each for 5,000 bins to $5.28 each for 50,000 bins. Columbia was to be the manufacturer of the bins for ECO-Clean.

In the meantime, the Minister had not approved the March 9 White Rock application for a recycling grant. The original application included operating costs which were not expenses that could be covered under the GO B.C. rules. White Rock had also indicated that Surrey Food Bank was to be the contractor whereas the Minister wanted Semiahmoo. The Minister had, on a copy of the White Rock application, changed the bin costs from $36,000 to $42,000 and extrapolated the operating costs from 24 weeks to one year.

It would appear that the White Rock application was not received by the GO B.C. office until June 1, 1989.

As a result of the April 15 request by Doonan and Sullivan, the Minister arranged a meeting on May 18, 1989 in his Ministerial office in the Parliament Buildings, Victoria. Also present at this meeting were Mr. Jim Van, Assistant to the Minister of Government Management Services; Mr. Jim Rabbitt, M.L.A. Yale Lillooet, author of the "Rabbitt Report" A Solid Waste Management Strategy for British Columbia; and Mr. Jon Donald ("Donald"), the Minister's Executive Assistant.

At the May 18, 1989 meeting Doonan and Sullivan showed the others present a sample of the recycling bins and a brochure of the compartmentalized truck to be used for picking up the waste materials. Describing this meeting:

On page 388 of the transcript of the hearing referred to in "Procedures", Sullivan said:

> "... and generally explained how the system worked and how it would be beneficial to use this system as a groundwork for a model project for the Province of British Columbia ultimately hoping that every municipality would standardize and use that system."

On page 389 of the transcript Sullivan said:

> "... and we were also looking for some research and development money in the neighbourhood of $50,000, because the mould would cost us in excess of $100,000."

On page 303 of the transcript Doonan said:

> "We were told that a pilot project could be funded by GO B.C."

(Q) To what extent?

(A) I think a hundred percent.

The Chairman:

> "Who was it that mentioned that? Was that Mr. Reid?"

(A) I believe so.

On page 5 of Mr. Reid's transcript the following exchange took place:

(Q) Do you recall being aware that they were going to be approaching White Rock Council and talking to them?

(A) Yes — when we talked about potential communities where a pilot model project could be implemented, I referred to my own because I really had a vision of this Community Pride project and recycling was a component of it and my community was one which I was anxious to implement the pilot model project ...

Mr. Van advised Doonan and Sullivan that he would arrange for someone from the Purchasing Commission to discuss their project with them. The following day Doonan was contacted by Mr. Peter Laipnieks ("Laipnieks").

Laipnieks' evidence was that on May 25, 1989 he met in a restaurant with Doonan, Sullivan and Mr. Hans Schinz ("Schinz"), the Minister's Ministerial Assistant. Doonan and Sullivan indicated they wanted to make a mould for the manufacture, by Columbia, of plastic recycling boxes.

On pages 636 - 638 of Laipnieks' transcript, discussing briefing notes prepared by the Purchasing Commission, the following exchange took place:

(Q) Looking at the next note ... ECO-Clean indicated a need for $50,000 to $100,000 in development funding over the $30,000 already invested.

(A) Uh huh.

(Q) They indicated to you that they had invested $30,000 in this?

(A) Yes, they didn't volunteer that. I somewhat insisted on that. "What have you spent so far?" I just wanted to see that this is a blue sky proposal, which, as you can appreciate, we often get, and they said they spent $30,000 at that point, and in my view, that gave some credibility. I never asked them to substantiate it, though, at that point.

(Q) Okay, and I was going to ask you that. That was the next question.

(A) No. I asked them to substantiate the whole thing with a proposal, which never came.

(Q) ... and you told them that the Purchasing Commission needed an order from a municipality?

(A) Yes.

(Q) And they had to produce that?

(A) Absolutely.

On page 643 Laipnieks continued:

(Q) You've mentioned that the design would have to be accepted by municipalities and an order received before you could proceed further.

(A) ... the proposal from ECO-Clean was they wanted the bin and they had a notion that the Purchasing Commission could accept their bin as the standard and I made it very clear to them that we have no authority. Its a municipal decision and they would have to win the business on a competitive basis at the municipal level — the Provincial Government had no authority to adopt one system over another.

Sullivan's evidence at the hearing was that Doonan and Sullivan had spent less than $1,000 on research and the rest of the $30,000 was time of both Doonan and Sullivan. Page 789 of Sullivan's transcript reads:

(Q) How much had been invested in the company, ECO-Clean, by the time you met with Mr. Laipnieks?

(A) A very small amount of capital, mostly time.

(Q) Less than a thousand dollars?

(A) Probably yes.

(Q) And what would you put the time cost at?

(A) February, March, April, May, four months. Two guys' time at four months - $40,000.

Doonan and Sullivan both gave evidence that at the May 18th meeting they believed that the Provincial Government had accepted their recycling program as a pilot project. They were sure that the funding was theirs. They only had to find a municipality to which to sell the program.

On Page 409 of Sullivan's transcripts, the following exchange took place:

(Q) And you've already told us that you had no intimation at any time that White Rock might want to put the job out for tenders?

(A) No, not at all, and I didn't -- and I didn't think that White Rock was in a position to put it out to tenders. It was a project being funded by the Provincial Government as a pilot project and they were getting, as opposed to -- to getting 30 percent funding through GO B.C., they were getting a hundred percent funding through GO B.C.

On pages 346 and 347 of Doonan's transcript, the following exchanges took place:

(Q) It's our understanding that the City of White Rock would have felt compelled to call for tenders on this project, which would have meant that you would have had to bid possibly against other competitors. Were you aware of that fact at any time?

(A) Well, that -- that would be a total misunderstanding on the part of White Rock, because White Rock was merely the recipients of a pilot programme. I stated earlier that I would have gone to -- to any town that was of a one-truck size. I mean White Rock had nothing. How could they go to tender? They either bought my programme with government funding or they weren't the recipients of it. It was -- that was black and white, cut and dried. They were never given a choice to go to tender. They were asked by me and by Mr. Sullivan if they wanted to be the recipients of the pilot programme, and they wanted to be, and as far as we know, they amended their application for funding to 18,000 bins, which was our multi-bin system. There was no other presentations made to them by anybody else to my knowledge on multiple-bin systems. We were the players.

(Q) And it's my understanding that the evidence will be that White Rock's position was that if they were to be the recipient of the quarter million dollar grant, they would dispose of it after calling for public tenders.

(A) Well, White Rock weren't given that choice. They wouldn't have been the recipient of the pilot programme to go to tender, because after all I had already received the project. I wasn't about to now go to tender. I didn't need a supplier. I was the supplier.

Doonan stresses that it was his pilot project. The evidence shows that ECO-Clean was only going to supply the equipment. White Rock was going to fund the operation and an organization such as Semiahmoo would provide the services. If Doonan's understanding was correct then ECO-Clean was to be the beneficiary of a GO B.C. grant.

On June 14, 1989, Doonan and Sullivan made a presentation to Hogg, Engineer Bob Gascoyne ("Gascoyne") and Administrator Wayne Baldwin ("Baldwin") of White Rock, of the three bin stacking recycling system. The White Rock officials were impressed with the system and invited Doonan and Sullivan to attend a White Rock Council "Committee of the Whole" meeting on June 19, 1989 to again demonstrate their system. They did attend this meeting.

On June 19, 1989, White Rock amended their application for a GO B.C. grant to include the three bin stacking system advocated by ECO-Clean. They also indicated on the amended application that the contracting would be performed by Semiahmoo.

By letter to the Minister dated June 5, 1989, ECO-Clean requested $50,000 from the Provincial Government for Research and Development.

By letter to the Minister dated June 15, 1989, ECO-Clean provided prices of curbside recycling vehicles.

Semiahmoo is a non-profit society dedicated to assisting the mentally handicapped. They had, for a period, contracted with White Rock for the pickup of waste paper for recycling. During the early part of 1989 they were receiving $800 per month from White Rock to help cover the costs of this service. The evidence shows that there had been discussions between Semiahmoo and White Rock relating to multi-material recycling but no negotiations had been commenced. White Rock officials have stated that if they did start a multi-material recycling program they would put the pick-up contract out to tender.

On March 13, 1989, the Minister had discussed with Hogg and Alanna Hendren ("Hendren"), the Executive Director of Semiahmoo, the possibility of Provincial Government funding for a paper recycling truck.

On June 23, 1989, Semiahmoo provided the Minister with a "Preliminary Proposal" relating to "White Rock Multi-Material Recycling Project". This proposal included a budget for operating costs. It is indicated in the proposal that White Rock would be buying recycling bins.

Also on June 23, 1989 a letter was sent from Hogg to the Minister stating that White Rock was impressed with the ECO-Clean presentation on recycling.

This letter was sent to the Minister at the request of Sullivan. Pages 456 - 458 of Hogg's transcript set out his recollection of the discussions with Sullivan:

> (Q) In any event, you left with Mr. Sullivan the impression that White Rock was in no sense committed to hiring ECO-Clean?
>
> (A) I made it very clear to him, because he was -- wanted very much for there to be a statement in writing that the Committee and Council was committed to following with that system, and I made it very clear to him that the Committee had only received the information; in fact, checked with the clerk to have again the -- motion read to me, and the motion that was passed, which was again only that the information be received and that no commitment was made with respect to that.
>
> (Q) Did he express some disappointment or surprise?
>
> (A) No, I -- he just reiterated that he would like that information conveyed to Mr. Reid.
>
> The Chairman:
>
> "Did he indicate at that point any urgency in that information being provided to Mr. Reid?"
>
> (A) Yes, he did.
>
> The Chairman:
>
> "And did he, in fact, ask that a letter be provided on that day?"

(A) Yes, he did.

Mr. Henderson:

(Q) From the point of view of White Rock and yourself, was there any particular urgency about this?

(A) The only urgency was urgency which I perhaps construed, and that was that if there was an opportunity to strike in terms of the funding, that we wanted to have all the documentation that was necessary before the Minister or whomever was going to make the decision. We wanted to ensure that we provided everything necessary so that we weren't delaying a decision in any fashion.

(Q) Once you got a receptive audience for your application, you wanted to take --

(A) Take advantage of that; that's right.

The Chairman:

> "... was it your impression from your conversation with Mr. Sullivan that the provision of this letter would enhance the probability of White Rock receiving a grant for this recycling concept?"

(A) Yes, it was.

The Chairman:

> "So it's in your mind on the 23rd a letter that you would provide to Mr. Reid would, in fact, enhance the chances of White Rock receiving this grant that you had applied for?"

(A) That was certainly the impression that -- that Mr. Sullivan was conveying to me.

Mr. Peter Martin ("Martin"), Executive Director of Public Programmes, Ministry of Tourism and Provincial Secretary, was the person responsible for administering GO. B.C. Martin gave evidence to the inquiry that he recalled a meeting with the Minister, prior to the approval of the grant to Semiahmoo. At this meeting he understood from the Minister that the proposed suppliers of the 3-bin recycling system had a "cost barrier" that could cause some problems. Martin also recalls suggesting to the Minister that if the grant was made to a non-profit society, rather than to White Rock, that would avoid the possibility of the grant recipient having to put the purchasing of the equipment out to public tender thereby delaying the project.

The Minister gave evidence that calling for public tender was "never a consideration" in his discussions with White Rock.

On June 26, 1989, Donald faxed to the GO B.C. office instructions, in the Minister's own handwriting, to award Semiahmoo a grant for $287,065. Included in these instructions was a list of items to be purchased. The list of items totalled $277,065. The grant was finally approved for $277,065. These instructions caused some consternation in the GO B.C. office. Lisa Markham ("Markham"), the Coordinator of the GO B.C. Program, on pages 594 - 595 of the transcript states:

> "I don't recall anything just like this, because we always preferred to have the application form, because in essence that was our legal document. There is a certification section that the applicant has to sign, and we always felt that was very important to have a proper formal application on file."

Markham's evidence also indicated that much of the documentation now in the GO B.C. files relating to this award was not in the files on June 26, 1989. Specifically, the two letters dated June 5, 1989 and June 15, 1989 from ECO-Clean to the Minister had not previously been seen by Markham.

On pages 603 - 604 of Markham's transcript the following exchange took place:

(Q) While having your discussions you didn't know who ECO-Clean was?

(A) No, that's right, because all we had were the fax sheets that these were photocopies of. That was all I had when I made the file up and did the approval. There was nothing else and I would have remembered this because I thought ECO-Clean, "gee, how do we know that spelling is even right", et cetera, and if I had had letterhead from them you know, if would have stuck out in my mind but I have never seen this before.

A standard practice for all GO B.C. grants was the production by the GO B.C. office of a large, cardboard mock cheque payable to the recipient and signed by the Minister to be used for publicity purposes. Such a cheque was produced payable to Semiahmoo in the amount of $277,065.

On June 26, 1989, Schinz contacted Doonan, Sullivan and Hendren requesting them to attend a White Rock Council meeting that evening. Hendren was introduced to Doonan and Sullivan outside the Council chamber. This was the first time she had ever met either of them. At this meeting, the Minister announced a computer grant of $23,112.05 to Semiahmoo. He also announced a grant of $277,065 for a Multi-Material Recycling Programme. There is conflicting evidence as to whether or not the Minister announced that the grant was going to Semiahmoo. All the White Rock officials interviewed stated that they thought the grant was going to White Rock.

Hendren's evidence is that after the meeting she was told by the Minister, or in the presence of the Minister, that Doonan and Sullivan would be in her office the next day. She was to give them a purchase order for all the equipment totalling the full amount of the grant and that 50% funding would be provided on receipt of the purchase order and the balance would be paid when the equipment was received. She said that the Minister indicated that Doonan was a truck expert and Sullivan a plastics expert, that they had checked out all the equipment and this was "state of the art". Exhibit 12 at the hearing was a letter from the Minister to Hendren thanking her for the GO B.C. application and setting out the equipment to be purchased and the payment schedule of the grant.

After the Council meeting the Minister obtained the large cheque from the trunk of his car and gave it to Hendren at the curbside with only Schinz in attendance.

Doonan and Sullivan did attend the Semiahmoo office the next day and obtained a purchase order from Semiahmoo. When discussing the costs of the equipment with Hendren, Doonan or Sullivan stated that the cost of the bins included $50,000 for Research and Development.

Hendren stated that on July 5, 1989, she received a phone call from Schinz to say that he had a cheque payable to Semiahmoo in the amount of $138,532 ready to be picked up. She further stated that, 10 to 30 minutes after that call, she had a call from Sullivan to say he understood the cheque was available and could he pick up the cheque to ECO-Clean. The cheque was picked up from the Minister's office and deposited to the bank account of Semiahmoo on July 5, 1989. Semiahmoo prepared a cheque for $138,532 payable to ECO-Clean. This was deposited into ECO-Clean's bank account on July 5, 1989.

On July 12, 1989, ECO-Clean received further quotations from Columbia for the manufacture of a mould. The least expensive of these moulds was $118,000. I understand that this quotation was picked up from Columbia by Sullivan.

In my discussion with Mr. Boon ("Boon") and Mr. Howard ("Howard") of Columbia I learned that they met with Doonan and Sullivan on June 26, 1989. ECO-Clean required a number of modifications to the plastic bin they had originally shown to Columbia. The modifications were significant giving rise to the increased quotation. When they met with Sullivan on July 12, he wanted to pay 50% of the original $84,500 quotation and order the mould. Boon explained that the modifications increased the cost of the mould, hence the higher quotations. Howard agreed to prepare some new drawings for ECO-Clean. These were provided to Sullivan on August 14, 1989. Columbia did not hear from ECO-Clean again until September 27, 1989. No order or money was received by Columbia from ECO-Clean.

Laipnieks had several discussions with Doonan and Sullivan. The Purchasing Commission's concern was to identify B.C. suppliers for what might be a multi-million dollar market. They were therefore interested in the ECO-Clean idea. According to Laipnieks, at a meeting in a Vancouver restaurant on July 13, 1989, Sullivan indicated to Laipnieks that ECO-Clean had secured a contract from White Rock and that their financing problems appeared to be solved. Laipnieks again asked for a written proposal. This was never received. On July 27, 1989 the Purchasing Commission did receive a referral from the Government Management Services Minister's office enclosing the ECO-Clean specifications and drawings.

In my opinion, the evidence is clear that Doonan and Sullivan had an idea for recycling. They had invested less than $1,000 of their own money and some time. They wanted the government to pick up at least some of their capitalization costs so that they could develop a recycling box that could be sold to the Purchasing Commission who would in turn sell to municipalities. They wanted the Purchasing Commission to accept their recycling box as the standard for the Province, thereby acquiring a considerable advantage over any competition as the first B.C. manufacturer.

The Minister's involvement ensured that ECO-Clean did not have to bid competitively for the White Rock project. By awarding the GO B.C. grant to Semiahmoo, who had not applied, instead of to White Rock, the Minister directed the purchaser to the supplier and provided ECO-Clean with $50,000 to assist in the purchase of a mould.

On page 795 of the transcript Sullivan, replying to a question from the Chairman, said:

> "Well, you know, we could have always supplied White Rock with a source not made in British Columbia if worst came to worst."

This begs the question of what was to happen to the $50,000 Research and Development money. It also undermines the purpose of the $50,000 in ensuring that ECO-Clean was a B.C. manufacturer.

The Minister, in his evidence, said that if ECO-Clean did not obtain a mould and purchased bins elsewhere, the $50,000 would be returned by ECO-Clean to the Government (see transcript pages 998 - 999). ECO-Clean had received the money from Semiahmoo who had in turn received the money from the GO B.C. funds. The grant documentation does not include any reference to the $50,000 for Research and Development. Such a recovery would, in my opinion, be difficult to obtain unless ECO-Clean voluntarily returned the money.

The Minister, in his evidence, states he was very enthusiastic about recycling. He was impressed with the three bin system being promoted by Doonan and Sullivan and he wanted to fast track the project. The decisions on the project were made, however, with very little hard evidence on capital costs, operating costs or the ability of any of the parties to perform.

Key elements of the GO B.C. Program as stated in the brochure include the following:

1. Normally up to one-third of the costs of a project will be funded up to a maximum of $1 million per project.
2. Applicants must have secured on-going funding for projects.
3. Applications must be accompanied by a financial plan for the project.
4. Funds will be paid in one-third instalments at the following stages:
   - (a) When the contract is let or work begun.
   - (b) When the project is half complete.
   - (c) Upon completion, following submission of a final audited statement of expenditures.
5. Application forms should be submitted before beginning the project because funding will not be provided for work done prior to applying.

The GO B.C. award to Semiahmoo did not meet these requirements because:

1. One hundred per cent of the costs of the project were approved.
2. Semiahmoo had not received a contract from White Rock and therefore were not assured of funding for operational costs.
3. No financial plan was provided.
4. Funds were paid 50% when equipment was ordered with the remaining 50% to be paid when the equipment was received.
5. No application form was submitted by Semiahmoo.

There appears to have been no real consultation among the parties. Before the grant was approved, Hendren had not even met Doonan and Sullivan. Semiahmoo had not known that White Rock submitted a GO B.C. application. White Rock had not known that Semiahmoo prepared a preliminary proposal for recycling.

At this time, a truck has been ordered and we understand, delivered to ECO-Clean. No action appears to have been taken prior to the press coverage on September 20, 1989 to obtain the bins with which to feed the truck, to find a site to empty the truck or find a market for the recyclable material. Semiahmoo have now indicated that they are incapable of performing and wish to return the GO B.C. grant.

It is worthy to note that Vancouver Council went to tender for recycling bins and received 12 bids from 10 different companies. Their bins are now being manufactured by Thunderbird Plastics Ltd. of Burnaby. The Vancouver bins are different from the ones proposed by ECO-Clean. I understand there is still considerable debate among the experts about the different recycling bins. Gascoyne, for example, is no longer convinced that the three bin system is the best since he had discussions on Friday, October 27, 1989 with the Manager of Recycling in Bellingham. He was advised that the bins were being taken and used for other purposes. He was concerned about the cost of continual replacements.

I shall be pleased to discuss this report with you.

Yours very truly,
ERNST & YOUNG

David Hooper
DH/cl

APPENDIX IV

SEMIAHMOO HOUSE SOCIETY RECYCLING GRANT CHRONOLOGY

For the purposes of this chronology the following short names have been used:

Minister: The Minister of Tourism and Provincial Secretary
Society: Semiahmoo House Society
City: City of White Rock
ECO-Clean: ECO-Clean Waste Systems Ltd. Principals Mr. George Doonan and Mr. William Sullivan.

1987

July 6	Minister appointed.

1988

July	Concept of GO B.C. discussed.
Aug.	Working group formed to design GO B.C. program.
Sept. 8	GO B.C. program introduced at the Union of British Columbia Municipalities Convention.
Oct. 17	GO B.C. program announced in a news conference held in Robson Square, Vancouver.
Dec. 12	The Executive Director of the Society met with the Minister and his Ministerial Assistant to resolve a funding problem that the Society was having.

1989

Mar. 6	The Minister met with Mr. John Nixon to discuss recycling.
Mar. 9	The City signed an application for a GO B.C. Grant for a multi-material recycling program.
Mar. 10	The Minister received the GRVD Solid Waste Committee Report.
Mar. 12	Doonan and Sullivan met for lunch to discuss recycling.

Mar. 13	The Minister discussed with the Mayor and the Executive Director of the Society the requirements for a truck to be used in the City's paper recycling program.
Mar. 19	Mayor Hogg and an Alderman from the City discussed recycling with the Minister at a reception.
Mar. 21	The Minister reviewed the City's GO B.C. grant application dated March 9, 1989.
Mar. 21	The Society discussed funding for computers with the St. Christopher's Foundation.
Mar. 23	Minister discussed with Mayor Hogg the City's grant application, recycling and street cleaning.
Mar. 28	The Minister met with the Executive Director of the Society to discuss the need for a new paper recycling truck.
Apr. 4	Doonan and Sullivan met with Mr. Scott Wood of Ropak Capilano to discuss recycling bins.
Apr. 11	The Minister visited the Society office and discussed multi-material recycling.
Apr. 15	Doonan and Sullivan met with the Minister and Schinz in the Constituency Office and discussed ECO-Clean and the recycling business. Doonan and Sullivan made aware of the City's application for a GO B.C. grant.
Apr.	Alderman Lower of the City requested an amendment of the City's GO B.C. application to include 100 sidewalk waste receptacles.
Apr. 17	The Society Board discussed a letter from the Minister and a meeting between Mr. John Hoy, President of the Society, and the Minister. The Society received an undertaking that the government was "prepared to buy us a suitable multi-material truck". The matter was referred to the Long Range Planning Committee.
May 3	Doonan met with Mr. Richard Boon of Columbia Plastics to discuss recycling bins and the manufacture of a mould.

May 8	Nor-Mar Truck and Equipment Ltd. prepared a quotation for the body of a proposed new recycling truck for the Society.
May 8	Phyllis Birch, a Director of the Society requested a meeting for herself and two other directors with the Minister to discuss a GO B.C. environment project.
May 10	Co-Van International Trucks Inc. prepared a truck quotation for the Society for their recycling program.
May 12	The Minister received the paper recycling truck quotations from the Society.
May 15	Columbia Plastics Ltd. presented ECO-Clean a quotation for the manufacture of an extrusion mould and the cost of making the bins.
May 18	Doonan and Sullivan met with the Minister; Mr. Jim Rabbit, MLA Yale-Lillooet; Mr. Jim Van, Ministerial Assistant to the Minister of Government Management Services; and Mr. Jon Donald, Executive Assistant to the Minister.
May 25	The Minister informed the City, by letter, that its GO B.C. grant application for funding a recycling program had been transferred to the Lottery Fund.
May 25	Doonan and Sullivan met with Mr. Peter Laipnieks of the Purchasing Commission and Mr. Hans Schinz the Minister's Assistant to discuss the possibility of the Purchasing Commission making a "first buy" of the recycling bins.
June 1	GO B.C. administration received a copy of the March 9, 1989, City application with pencilled amendments.
June 5	Letter from ECO-Clean to minister confirming the May 18, 1989 meeting discussion and requesting $50,000 government assistance toward the research and development of the proposed program. (This was to be used as a 50% contribution towards the cost of an extrusion mould).
June 7	The Society applied for a GO B.C. grant of $7,704.02 to fund one third of a proposed computer purchase.
June 13	The Society's application for a GO B.C. grant for computer purchase mailed.

June 14	Doonan and Sullivan met with the Mayor, Administrator, and Engineer of the City to present the three bin multi-material recycling proposal.
June 15	Letter from ECO-Clean to the Minister setting out several options for the type and cost of a truck necessary for a three bin recycling system.
June 15	The Minister acknowledged, by letter, the City's GO B.C. application and informs that it has been sent to the GO B.C. office for review.
June 15	The Minister approved the Society's grant application for computer purchase.
June 17	The Society's Board, in a retreat, discussed their 1989/90 programme including multi-material recycling.
June 19	The City's Committee of the Whole received a presentation from ECO-Clean on the three bin multi-material recycling pilot project.
June 19	The City completed a revised application for a GO B.C. grant for $257,700 for a three bin system, multi material recycling program.
June 19	The Minister received a call from the Executive Director of the Society to discuss the joint program with GO B.C., the City and the Society.
June 20	The Society Board meeting reported three proposals totalling $23,100 to cover the cost of the computer project. The Society's Long Range Planning Committee recommended proceeding with a White Rock multi- material recycling project as follows: - the City would purchase the bins from the grant; - GO funding would be needed to purchase a truck and a fork lift; and - the City would pay a fee of $40,000 per year.
June 20	Minister's testimony was that he sent the City's revised GO B.C. grant application to staff. Date may have been June 21 or 22.
June 21	Sullivan called Mr. Boon at Columbia Plastics to set up another meeting.

June 23	The Society prepared a preliminary proposal for a multi-material, single box, recycling program. It was submitted to Mr. Hans Schinz.
June 23	The Minister received the proposal from the Society for multi-material recycling.
June 23	The Minister received the updated grant application from the City indicating Semiahmoo House Society to be the recycling contractor and requesting $257,000.
June 26	Sullivan met with representatives of Columbia Plastics and requested changes to the design of the mould.
June 26	Minister sent, by facsimile, his notes for approval of a grant to be paid for the Semiahmoo Community Pride Model Recycling Project.
June 26	The Minister approved a grant in the amount of $277,065 to the Society.
June 26	Lottery Branch deemed the City's grant application to be withdrawn.
June 26	Letter from the Minister to the Society thanking it for the application for GO B.C. funding and giving approval for an amount of $277,065.
June 26	The Minister attended the City Council Meeting, announces the grant to the Society for 100% of their computer purchase ($23,112) and also announces the Semiahmoo Community Pride Model Recycling Project.
June 27	Doonan and Sullivan went to the Society's office and the Society completed a purchase order to ECO-Clean for purchase of a truck and bins. The total amount was $277,065, with 50% paid down which was the amount of the first cheque to be received from GO B.C.
June 29	Sullivan called Columbia Plastics to set up a further meeting.
June 30	News release on the payment of the first half of the grant to the Society.
July 5	The Society received the first half of the $277,065 grant. The cheque, dated June 30, 1989, was for $138,532.

July 5	Sullivan picked up the deposit cheque from the Society to ECO-Clean. This is the first amount deposited to the ECO-Clean bank account.
July 6	Doonan and Sullivan met with Columbia Plastics Ltd. to discuss the design of the stackable bins and discussed going out for quotes.
July 10	Columbia Plastics provided preliminary drawings and a critical path diagram to Sullivan.
July 12	Columbia Plastics revised their quotation for the production of the extrusion mould. This was picked up by Sullivan and Doonan and discussed. No guarantee on delivery dates. Columbia undertook to produce isometric drawings.
July 13	Doonan and Sullivan met with Peter Laipnieks to discuss the possible involvement of the Purchasing Commission in setting standard specifications for recycling bins.
July 13	The Society's Vocational Committee reported on the provision of $277,000 for the recycling program. It was noted that the first priority was for a contract with the City.
July 14	ECO-Clean Waste Systems Ltd. was registered by way of name change from Jarie Holdings Ltd.
July 20	The Executive Director of the Society wrote to the Minister to express the Society's thanks for the two cheques and to enclose a copy of their initial proposal to the City for the recycling program. The proposal was mailed the same day to the City.
July 24	The Minister received a copy of a letter from the Society to the City advising that the Society wanted to conclude a contract for multi-material recycling as soon as possible.
July 27	The Minister visited his colleague the Minister of Government Management Services to provide him with the specifications for the bins to be used in a three bin system and to seek the approval of them by the Purchasing Commission.

July 27	Letter from Hon. Cliff Michael, Minister of Government Management Services to Mr. Steve Hutchings, C.E.O. Purchasing Commission enclosing specifications received from ECO-Clean for the plastic bins to be used in the proposed three bin system.
Aug. 14	Columbia Plastics provided ECO-Clean with the isometric drawings. No more contact until Sept 27, 1989.
Aug. 29	The Minister advised the Semiahmoo Peninsula Community Pride Committee that the Province would consider funding approved three bin recycling systems where municipalities already had single bin "blue box" systems in place. The old bins could be sold to the manufacturers of the new bins and recycled.
Aug. 30	GO B.C. administration received the City application dated June 19, 1989.
Sept. 13	The City Administrator presented a memorandum to Committee of the Whole on the recycling project.
Sept. 14	The Minister received, by facsimile from the Mayor of White Rock, a copy of a memorandum dated Sept.13, 1989 prepared by Mr. Baldwin, City Administrator, outlining the history of the City's grant application, criticizing the disposition of the grant.
Sept. 15	The Minister called the Mayor to discuss the Baldwin memorandum and the ownership of the recycling truck.
Sept. 16	The Minister discussed the employment of the Society's clients in the recycling project with the Society's Executive Director and a Board Member (Phyllis Birch).
Sept. 18	Sullivan phoned Laipnieks to see what support the Purchasing Commission would provide to the project.
Sept. 19	The Society Board meeting discussed a multi-material recycling report prepared by Hendren and the Baldwin report prepared for the City (dated Sept. 13, 1989). It was decided not to be involved and to write to the Minister to this effect.
Sept. 20	The Vancouver Sun published a story on the GO B.C. grant paid to the Society.

Sept. 20	By double registered mail the Society cancelled its order to ECO-Clean and requests a full refund of their deposit.
Sept. 22	Minister resigned.
Sept. 25	City Council received minutes of meeting of Committee of the Whole of September 18, to deal with the Administrators concerns over the sequence of events to date, relative to GO B.C. grant application.
Sept. 25	ECO-Clean paid the unexpended balance of the deposit monies received from the Society into a lawyers' trust account.
Sept. 26	ECO-Clean's lawyers wrote to the Society stating the company's position on the cancellation of the order and the disposition of the deposit funds.
Sept. 26	The Comptroller General was requested to review the making of the grants to the Society.
Sept. 30	Letter from the Society to the Minister informing him of the Society's withdrawal from the multi-material recycling program. According to Mr. Reid's testimony this letter was picked up by Mr. Reid on September 25.

7A

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 7A
DATE: Aug 27/90
KRH

PURSUANT TO THE FINANCIAL ADMINISTRATION ACT,
SS. 7 and 8, R.S.B.C. 1979, CHAPTER 128.5
AND THE INQUIRY ACT, SS. 12, 15 and 16,
R.S.B.C. 1979, CHAPTER 198

IN THE MATTER OF AN INQUIRY BY THE COMPTROLLER
GENERAL RELATING TO THE FINANCIAL ADMINISTRATION
OF THE GROWTH AND OPPORTUNITIES B.C. PROGRAMME

COMPTROLLER GENERAL INQUIRY
Held at Richmond, B.C. October 10, 1989
Volume 1

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CHALLONER REPORTING SERVICES
WORLD TRADE CENTRE
404 - 999 CANADA PLACE, VANCOUVER, B.C. V6C 3E2
TELEPHONE (604) 641-1388

DISCRETION TO
PROSECUTE INQUIRY.
EXHIBIT # 7B
DATE: Aug 27/90

**PURSUANT TO THE FINANCIAL ADMINISTRATION ACT,
SS. 7 and 8, R.S.B.C. 1979, CHAPTER 128.5
AND THE INQUIRY ACT, SS. 12, 15 and 16,
R.S.B.C. 1979, CHAPTER 198**

**IN THE MATTER OF AN INQUIRY BY THE COMPTROLLER
GENERAL RELATING TO THE FINANCIAL ADMINISTRATION
OF THE GROWTH AND OPPORTUNITIES B.C. PROGRAMME**

COMPTROLLER GENERAL INQUIRY
Held at Richmond, B.C. October 11, 1989
Volume 2

C O P Y

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1C

DISCRETION TO
PROSECUTE INQUIRY

EXHIBIT # 7 c

DATE: Aug 27/90

PURSUANT TO THE FINANCIAL ADMINISTRATION ACT,
SS. 7 and 8, R.S.B.C. 1979, CHAPTER 128.5
AND THE INQUIRY ACT, SS. 12, 15 and 16,
R.S.B.C. 1979, CHAPTER 198

IN THE MATTER OF AN INQUIRY BY THE COMPTROLLER
GENERAL RELATING TO THE FINANCIAL ADMINISTRATION
OF THE GROWTH AND OPPORTUNITIES B.C. PROGRAMME

COMPTROLLER GENERAL INQUIRY
Held at Richmond, B.C. October 12, 1989
Volume 3

C O P Y

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7

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 7 D
DATE: Aug 27/90

PURSUANT TO THE FINANCIAL ADMINISTRATION ACT,
SS. 7 and 8, R.S.B.C. 1979, CHAPTER 128.5
AND THE INQUIRY ACT, SS. 12, 15 and 16,
R.S.B.C. 1979, CHAPTER 198

IN THE MATTER OF AN INQUIRY BY THE COMPTROLLER
GENERAL RELATING TO THE FINANCIAL ADMINISTRATION
OF THE GROWTH AND OPPORTUNITIES B.C. PROGRAMME

COMPTROLLER GENERAL INQUIRY
Held at Victoria, B.C. October 27, 1989
Volume 4

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CHALLONER REPORTING SERVICES
WORLD TRADE CENTRE
404 - 999 CANADA PLACE, VANCOUVER, B.C. V6C 3E2
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1E

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 7E
DATE: Aug 27/90

**PURSUANT TO THE FINANCIAL ADMINISTRATION ACT,
SS. 7 and 8, R.S.B.C. 1979, CHAPTER 128.5
AND THE INQUIRY ACT, SS. 12, 15 and 16,
R.S.B.C. 1979, CHAPTER 198**

**IN THE MATTER OF AN INQUIRY BY THE COMPTROLLER
GENERAL RELATING TO THE FINANCIAL ADMINISTRATION
OF THE GROWTH AND OPPORTUNITIES B.C. PROGRAMME**

COMPTROLLER GENERAL INQUIRY
Held at Vancouver, B.C. October 30, 1989
Volume 5

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404 - 999 CANADA PLACE, VANCOUVER, B.C. V6C 3E2
TELEPHONE (604) 641-1388

7

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 7 F
DATE: Aug 27/90

PURSUANT TO THE FINANCIAL ADMINISTRATION ACT,
SS. 7 and 8, R.S.B.C. 1979, CHAPTER 128.5
AND THE INQUIRY ACT, SS. 12, 15 and 16,
R.S.B.C. 1979, CHAPTER 198

IN THE MATTER OF AN INQUIRY BY THE COMPTROLLER
GENERAL RELATING TO THE FINANCIAL ADMINISTRATION
OF THE GROWTH AND OPPORTUNITIES B.C. PROGRAMME

COMPTROLLER GENERAL INQUIRY
Held at Richmond, B.C. November 2, 1989
Volume 6

C O P Y

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404 - 999 CANADA PLACE, VANCOUVER, B.C. V6C 3E1
TELEPHONE (604) 641-1288

WRIGHT 7

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 7G
DATE: Aug 27/90
#20A

PURSUANT TO THE FINANCIAL ADMINISTRATION ACT,
SS. 7 and 8, R.S.B.C. 1979, CHAPTER 128.5
AND THE INQUIRY ACT, SS. 12, 15 and 16,
R.S.B.C. 1979, CHAPTER 198

IN THE MATTER OF AN INQUIRY BY THE COMPTROLLER
GENERAL RELATING TO THE FINANCIAL ADMINISTRATION
OF THE GROWTH AND OPPORTUNITIES B.C. PROGRAMME

COMPTROLLER GENERAL INQUIRY
Held at Richmond, B.C. December 4, 1989
Volume 7

C O P Y

CHALLONER REPORTING SERVICES
WORLD TRADE CENTRE
404 - 999 CANADA PLACE, VANCOUVER, B.C. V6C 3E2
[illegible]

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[illegible] SECU
E[illegible] 8
DATE: May 4, 1990
KRH

January 8, 1990

Mr. Richard C. C. Peck, Q.C.
Robertson, Peck, Thompson
Barristers and Solicitors
1811 - 808 Nelson Street
Vancouver, British Columbia
V6Z 2H2

Dear Sir:

Re: William Earl Reid, George Barry Doonan and Richard William Sullivan

Further to our recent telephone conversation I enclose herewith background material with respect to the R.C.M.P. investigation into the above noted individuals.

Enclosed you will find a report prepared by Inspector E.C. MacAulay of the Commercial Crime Section of the R.C.M.P., a copy of the as yet unreleased and still confidential report of the Comptroller General involving this matter as well as transcripts of the Comptroller General's inquiry.

Our office is in the process of putting the final touches our report and we ask that you conduct a second independent review of this material for the purposes of providing us with your legal opinion on whether or not the usual charge approval criteria have been met and whether or not a prosecution should ensue.

We are pleased to retain you at a rate of $150.00 per hour. Due to the high profile of some of these individuals there is some urgency in completing the legal opinions required in this matter. It would be appreciated if your opinion could be completed by Monday, January 15, 1990.

I would be pleased to discuss this matter with you at any time.

Yours truly,

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

Province of British Columbia
Ministry of Attorney General
REGIONAL CROWN COUNSEL

307, 815 Hornby Street, Vancouver, British Columbia V6Z 2E6 Telephone: (604) 660-4100 Facsimile: (604) 660-4198

MEMORANDUM

TO: R.H. Wright Q.C.
Regional Crown Counsel

DATE: January 9, 1990

FROM: M.J. Carstairs
Senior Crown Counsel
Commercial Crime Section

RE: **William Earl REID, George Barry DOONAN, and Richard WILLIAM**

DISCRETION TO PROSECUTE INQUIRY
EXHIBIT # 9
DATE: May 4, 1990

This file was prepared by Inspector MacAulay of the RCMP, Commercial Crime Section and submitted to this office with the recommendation that charges of Fraud and Breach of Trust by a Public Officer. In my opinion the file discloses no evidence that would substantiate charges of fraud against the three suspects. I am further of the view that there is some evidence to substantiate a charge of Breach of Trust by a Public Officer against William Earl Reid. I will expand on the opinion herein.

Materials considered:

In forming my opinion, I have considered only those documents and materials provided to me by yourself. Except for a brief conversation with Mr. David Hooper, Chartered Accountant, I have not consulted with anyone else nor sought out documents from other sources. In particular I have given careful consideration to the Court Brief provided by the RCMP, and the report prepared by Mr. David Hooper for the Comptroller General.

In preparing my opinion I will assume the facts as outlined by Superintendent MacAulay in his court brief and will only emphasis certain facts in support of my opinion.

✓ Fraud

There are numerous sections in the Criminal Code that specifically deal with fraud including section 122, Breach of Trust by Public Officer, which will be dealt with later in this opinion. The general offence of fraud is described in section 380(1) as follows:

> "380.(1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security,
>
> (a) is guilty of an
> a term of imprisonment not exceeding ten years, where the subject-matter of the offence is a testamentary instrument or where the value of the subject-matter of the offence exceeds one thousand dollars; or
>
> (b) is guilty
> (i) of an indictable offence and is liable to imprisonment for two years, or
> (ii) of an offence punishable on summary conviction
>
> where the value of the subject-matter of the offence does not exceed one thousand dollars.

2. Elements of Fraud

(a) "by deceit, falsehood or other fraudulent means"

R. v. Olan, [1978] 41 C.C.C. (2d) 145 is the leading case on this part of the section and the bottom line appears to be that "fraudulent" means "dishonest":

> "The words "fraudulent means" in s.338(1) include means which are not in the nature of a falsehood or a deceit; they encompass all other means which can properly be stigmatized as dishonest." (p.149)

(b) "whether or not it is a false pretence"

This clause seems to make any offence under s.320 (false pretences) a fraud as well, so long as the subject matter fits both definitions (see infra).

(c) "defrauds the public of any person, whether ascertained or not"

This classic definition of "defraud" is found in *Re London and Glove Fin. Corp. Ltd.*, [1903] 1 Ch. 728 at 723:

> "To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."

R. v. Olan puts it more succinctly: "to succeed, the Crown must establish dishonest deprivation" (p.150). further, "the element of deprivation is satisfied upon proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim" (*loc. cit*.). Thus, the Crown does not need to prove *actual* loss, merely risk.

(d) "of any property, money or valuable security"

Before assuming that these terms include almost anything, look at the definitions of "property" and "valuable security" in s.2 of the *Code*. While the definitions begin with "includes", the *ejusdem generis* and *exclusio* rules probably limit the meanings of these terms considerably. Defrauding somebody of a service is not covered by this section. "Intellectual" property is still the subject of debate (see *Stewart* and *Offley*, *supra*). A prescription is not "property", merely a "direction", according to *R. v. Falconi*, (1976) 31 C.C.C. (2d) 144 (O.C.C.). Credit is not covered specifically in s.362 but would be a problem under s.380. Generally speaking, when one fraudulently obtains only the right to do something or to have something done, problems arise in applying this section.

(e) "fraudulent intent"

What is the standard or test for "dishonesty"?

The Ontario Court of Appeal, in *R. v. Black and Whiteside* (1983), 5 C.C.C. (3d) 313 at 318-19, applying *R. v. Feely* [1973] I.Q.B. 530, suggests that dishonesty should be measured in relation to the standards of ordinary, decent people.

> Proof of dishonesty requires not only proof that the act be judges objectively dishonest, but also proof that that the accused knew the act was dishonest and intended to act dishonestly. This fundamental principle has been restated recently by the Ontario Court of Appeal in R. v. Bobbie (1988) 43 C.C.C. (3d) 187.

Opinion

It is my opinion that the City of White Rock was not defrauded of money, property or valuable security by any act of deceit or falsehood. Nor was the City of White Rock defrauded by "other fraudulent means, "as defined by Mr. Justice Dickson in R. v. Olan supra, namely "dishonest, deprivation".

Although the circumstances leading up to, and the granting of the $277,065.00 from GO B.C. to the Semiahmoo Housing Society ("SHS") have been characterized by Brian Marson as being irregular and improper and may be viewed objectively as being dishonest, it is my opinion that there has been no deprivation suffered by the City of White Rock. Once again, it is to be kept in mind that deprivation includes prejudice or risk of prejudice.

Mr. Reid as Provincial Secretary was the Minister responsible for the GO B.C. program and gave final approval for all grants made under it. It was at the discretion of Mr. Reid whether to approve or reject any application for money under the program whether the general guidelines were met or not.

The City of White Rock ("City") made application for funds on March 9, 1989, for a multi-material recycling program. The City amended their application of June 9, 1989, and is received by the Minister on June 20, 1989. On the same day the Minister receives the amended application, the SHS directors met to discuss proceeding with the White Rock multi-material recycling project.

On June 26, 1989, the City's application is "deemed W/D" and the Minister authorized $23,100.00 to the Society to cover the cost of the computer project which it had applied for and $277,065.00 for the multi-material recycling project which it had not made application for.

There are many other unusual circumstances surrounding the $277,065.00 grant, however it should be noted that:

1. The City had no legal right to any money from GO B.C.
2. The application submitted by the City were never approved.
3. It was at the direction of Mr. Reid whether to grant or reject any application.

It is my opinion that you cannot deprive a person of money, property, or valuable security, if that person does not have a legal or equitable right to the property, nor, was the City prejudiced in any way and was free to re-apply, which they apparently have done.

Breach of Trust by Public Officer

Breach of Trust by a Public Officer is an offence pursuant to section 122 of the Criminal Code and reads as follows:

> Breach of Trust by Public Officer
>
> "122. Every official who, in connection with the duties of his office commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person. R.S., c. C-34, s.111."

Elements of the Offence:

(a) "official" and "office"

"official" is defined under section 118 of the Criminal Code:

> "official" means a person who
>
> (a) holds an office, or
> (b) is appointed to discharge a public duty;

"office" is also defined under section 118 of the Criminal Code:

> "office" includes
>
> (a) an office or appointment under the government,
> (b) a civil or military commission, and
> (c) a position or an employment is a public department;

Many of the cases discuss whether an accused falls within the definition of being an official. See The Queen v. Sheets 1971 1 C.C.C. (2d) 508 S.C.C., R. v. Robillard, R. v. Charbonneau 1985 18 C.C.C. (3rd) 266 at 272 (Que.C.A.), Rex v. McMorran 1948 5 CR 338 (Ont. C.A.).

These cases deal with appointed positions and therefore whether or not the accused falls within the definition of the Code.

In R. v. Fraser [1983] N.W.T.R. 280 and R. v. McKitka (1982) 66 C.C.C. (2d) 164, both accused were elected officials and were held to fall within the definition.

The Criminal Code also requires that the alleged breach of duty be "in connection with the duties of his office". It would not be an offence under section 122 if the alleged breach was not directly related to his position as an official. If he were to commit an offence in relation to a private business that had no direct or indirect connection with his public duty then in my view it would not be a breach of section 122.

(b) "commits fraud or a breach of trust"

A breach of trust is defined by Underhill on Trusts and Trustees, 9th ed. 1939, p.3 as follows:

> "Any act, or neglect in the part of a trustee which is not authorized or excused...by law, is called a breach of trust."
>
> Rex v. McMorran 1948 5 CR 338 at 345.

A breach of this section may be committed in two ways, i) by fraud, or ii) a breach of trust.

(i) Defining "fraud"

It is noteworthy that there are no reported cases that deal directly with the aspect of fraud under this section. Fraud has a very broad meaning as interpreted by the S.C.C. in R. v. Olan supra, and includes any "dishonest deprivation". As discussed earlier a jury might have no problem determining what is dishonest, as it is their decision. However, there is no evidence to suggest that the City was deprived or even prejudiced. If anyone was deprived it would be the GO B.C. program, and they are not complaining.

If the test for fraud under section 122 is the same as set out by Dickson, J.A., in R. v. Olan, then it would logically follow that any accused would be charged under section 380(1) of the Code, which has greater penalties than under section 122. This perhaps explain why the cases do not specifically deal with fraud under section 122.

(ii) Defining "breach of trust"

The work "trust" as used in section 122 of the Code is defined in The Shorter Oxford English Dictionary 3rd ed. (1977) as:

> "The confidence reposed in a person in whom the legal ownership of property is vested to hold or use for the benefit of another."

It is clear that the offence includes a breach of public confidence. The Court in R. v. Fraser [1983] N.W.T.R. 280 at 281 in reviewing several authorities states:

> "...the offence was a breach of public confidence; and in my view s.111 of the Code should be given very wide interpretation."

The limits of this interpretation can best be summed by Wells, J.A., in R. v. Campbell supra, when he states:

> "In our opinion s.103 is wide enough to cover any or each of the appropriate standard of responsibility and conduct demanded of the accused by the nature of his office as a senior civil servant of Crown..."

This definition must be considered the high water mark of breach of trust. In order to appreciate this definition it would be helpful to examine its historical roots. In coming to this opinion, Wells, J.A., carefully examines the history of the section as follows:

> "103...Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person."

> This section which, in slightly different form, first appeared in the first version of the Criminal Code which was passed in July of 1892 [c.29], provided that is should come into force on the first day of July, 1893. The section is one which appeared in some of the later drafts of a proposed Criminal Code generally associated with the name of Sir James Stephen and stems from the famous decision of Lord Mansfield in the case of The King v. Bembridge, which was reported originally in (1783), 3 Dougl.327, and is more conveniently found in 99 E.R. 679. Bembridge was an accountant in the office and place of the Receiver-General of the Forces and it was said that he had wilfully and fraudulently refused and neglected to disclose any charges upon a former Receiver and Paymaster of the Force which covered certain substantial items which had been omitted from the accounts, although he knew that several sums of money were not included in the said accounts. Lord Mansfield described Bembridge's position as one of an office of trust and on p.332 Lord Mansfield observed:

>> "As to the motion in arrest of judgment the objection is, that this is a civil injury, and not indictable, and it is said that there is no precedent. The law does not consist of particular cases but of general principles, which are illustrated and explained by these

> cases. Here there are two principles applicable: first, that a man accepting an office of trust concerning the public, especially if attended with profit, is answerable criminally to the King for misbehaviour in his office; this is true, by whomever and in whatever the way the officer is appointed. In Vidian (Vidian's Entries, p.213) there is a precedent of an indictment against the custos brevium for losing a record. Secondly, where there is a breach of trust, fraud, or imposition, in a matter concerning the public, though as between individuals it would only be actionable, yet as between the King and the subject it is indictable. That such should be the rule is essential to the existence of the country."

Further down, towards the conclusion of his judgment, Lord Mansfield referred to the rule laid down by Mr. Sergeant Hawkins in the following words [p.332]:

> "The rule is well laid down by Mr. Serji. Hawkins (Book ii, c.25, s.4), that all kinds of crimes of a public nature, all misdemeanors whatsoever of a public evil example against the common law, may be indicted; but no injuries of a private nature, unless they some way concern the King."

In the result, the application, which was an application in arrest of judgment, was dismissed. The two other Judges sitting, Willes and Buller, JJ., agreed with Lord Mansfield. Lord Mansfield also referred to what is known as an Anomymous Case, which was a decision of the Court of King's Bench in the second year of the reign of Queen Anne. It is found as Case 136 in Mod.Rep., vol.6, p.96, and is reported briefly as follows:

> "Per Curiam. if a man be made an officer by act of parliament, and misbehave himself in his office, he is indictable for it at common law, and any publick officer is indictable for misbehaviour in his office."

In the more recent case of R. v. McMorran, [1948] O.R. 384, 91 C.C.C. 19, 5 C.R. 338, the late Hogg, J.A., dealt with s.103 which was then s.160 of the Criminal Code, R.S.C. 1927, c.36. He described the charge in that case as follows [p.391 O.R., p.24 C.C.C.]:

> "The indictment presented to the Court charged that the accused McMorran was guilty on three counts of criminal misconduct in the use he made of his functions as Allocations Officer of the Wool Administration of the Wartime Prices and trade board."

It is quite clear, from reading the balance of Hogg, J.A.'s judgment that he regarded what is now s.103 of the Criminal Code as derived from Lord Mansfield's decision in the Bembridge case which, in turn, partly rested on the decision of the Court of King's Bench in the Anonymous Case, which I have already referred to.

Earlier in Ontario, a similar problem was faced and dealt with in the case of R.v . Arnoldi (1892), 23 O.R. 201. It was a trial at Ottawa by Chief Justice Armour. The facts are summarized in the headnote:

> "An officer in the public service of Canada having charge of the public dredging and whose duty it was to audit the expenditure therefore, used property of his own in connection with the dredging, having first placed it in the name of a third party, in whose name also he made out the accounts. No undue gains were made by him, but as such public officer he certified to the correctness of the accounts respecting the use of his said property as though for services rendered by contractors with the Government, and thereby received for himself a payment for those services."

This case was reserved by Chief Justice Armour sitting on Assizes at Ottawa. It is to be noted that the Criminal Code which contained the original form of s.103 did not come into force until the first of July, 1893, and that, consequently, the matter was decided under the common law. The Code, however, was put forward substantially as a codification of the common law. The Chancellor's views as expressed after the Code had been passed but was not yet in force are, in my opinion, of considerable weight and authority as to the meaning of what was then s.135 of that statute, that is the precursor of the present s.103.

That case was reserved by the Chief Justice because he had directed the jury that they should find a verdict of "not guilty" in respect of certain counts in the indictment charging the accused with obtaining money under false pretences, but that they should find a verdict of "guilty" against the defendant on the counts in the indictment charging him with misbehaviour in office. These were the first three counts in the indictment and, before passing sentence, he reserved the question for the opinion of the Chancery Division of the High Court of Justice, whether the finding upon the first three counts could be sustained in point of law.

The reserved case came on for argument before Chancellor Boyd and Meredith, J., on December 10, 1892, and it was argued that no criminal offence existed, because it was essential that pecuniary damage must result to the public for reason of the irregular conduct of the officer. The Chancellor rejected this argument and apparently proceeded on the theory that, by charging a reasonable price for the service of the dredge, the accused had profited by his own dereliction of duty. The duty of the accused was to audit certain accounts of which he had personal cognizance as a government official and to verify their propriety and correctness. In his judgment he dealt with a number of ancient authorities dealing with misbehaviour and misfeasance in public office. He came to the conclusion that the element of profit which had not been excessive, was inmaterial, except possibly as an element of mitigation of the accused's conduct. At p.212 in the concluding paragraph he set the matter out as follows:

> "The gravity of the matter is not so much in its merely profitable aspect as in the misuse of power entrusted to the defendant for the public benefit, for the furtherance of personal ends. Public example requires the

> infliction of punishment when public confidence has thus been abused, and my judgment is, that the conviction should be sustained."

It is clear from the authorities that the accused need not receive a benefit, nor in law need there by any benefit at all. Having said that, any prosecution under this section is made considerably easier if the prosecution can point to some direct or indirect benefit occurring to the accused.

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Before leaving I should make reference to R. v. Cyr, 45 C.R. (3d) 87 (C.S. Que.), (1987) 9 Q.A.C. 107 (C.A. Que.), to appeal to S.C.C. refused (1988), 89 N.R. 79 (S.C.C.) which considered the elements of an offence under section 111 (now s.122) of the Code.

Hannah J., states as follows:

1. It must be established that the act in breach of trust was committed by an official or someone who would be equally culpable with an official, according to the law, for example by means of s.21 of the Criminal Code.

2. Breach of trust according to s.111, implies the use of a public position for the advancement of private ends ("furtherance of personal ends"), it mattering little if the position is occupied as a result of election or appointment by contract or otherwise: Leblanc, supra; Martineau v. R. (citation): R. v. Sheets (citation).

3. Breach of trust can be committed without the accused having acted dishonestly, in a corrupt fashion, or even having done any illegal act; the crime is rather that which is recognized according to the English terms of the common law by the name "misbehaviour" and "misfeasance in public office". The simple presence of a person in authority that allows a third party to believe that that presence implies that the third party is well advised to follow one course of conduct rather than another, is capable of being considered a breach of trust in certain circumstances: R. v. Bouchard (citation).

4. Breach of trust can be committed by the simple fact duty of to two opposing interests, when one of these interests in question is that of the public. The existence of a double mandate cannot legalize acts or omissions prohibited by the Criminal Code: R. v. Campeau (citation).

5. Breach of trust can be committed by an official if he is in contravention of a contract, which contravention will give rise to civil recourse. The violation can be considered criminal and a breach of trust by the simple fact that an official has done acts giving rise to civil recourse: R. v. Lessard (citation).

6. Breach of trust can be committed by an official who maintains silence at the moment of approval of something which is capable of bringing him the benefits of advantage to his private ends. A fortiori the official who gives his approval to such matter can equally commit breach of trust: Lessard, supra.

7. Breach of trust can be committed without there being evidence of a benefit, direct or indirect, in favour of the official. It is not necessary that the breach bring a benefit to the official. The use of a power, granted by the public, in order to facilitate private ends is a breach of the public's trust: Leblanc, supra.

8. Breach of trust can be committed by the simple the abuse of the position that the official occupies; it is not necessary that the abuse be connected with particular property: R. v. Campbell, (citation); R. v. McMorran (citation).

In considering whether or not to grant a motion for "nonsuit" he concluded:

> "It flows from the proceeding that if there is evidence before the jury:
>
> (1) Of the existence of an official position; and
>
> (2) that the accused official was such at the time stated in the charges, or if the accused is associated with the official according to a provision of criminal law; and

(3) that the acts or omissions of the accused for the furtherance of personal ends ("furtherance of personal ends"), could bring prejudice to the confidence that the public has placed in the position occupied by the accused; the court must not allow the said motion for "nonsuit".

Opinion

In forming any opinion it is necessary to answer two questions for a successful prosecution.

1. What conduct by the accused constituted a breach of trust?
2. What benefit did the accused either directly or indirectly receive or give which was improper?

In answering these questions it is necessary for me to deal with the facts, in very general terms.

Mr. Reid, was at all material times, Minister of Tourism, and Provincial Secretary, and as such had absolute discretion over the allocation of GO B.C. funds.

Mr. Doonan was Reid's campaign manager during the 1986 Election and Mr. Sullivan was a personal friend of Mr. Reid and in particular a very close friend of Reid's daughter. Both friends of Mr. Reid were associated with a company by the name of Eco-Clean Waste Systems Ltd., a company owned by Doonan's wife, which had made a proposal to the City of White Rock with respect to a 3 bin multi-material recycling program.

Semiahmoo Housing Society ("Semiahmoo") is a non-profit society dedicated to assisting the mentally handicapped. They had, for a

Period, contracted with the City of White Rock for the pickup of waste paper for recycling. Semiahmoo never applied for GO B.C. money with relation to multi-material recycling, but had with respect to a computer grant of $23,112.05. On June 26, 1989, Mr. Reid announced that Semiahmoo would receive $23,112.05 for computers and $277,065.00 for the Semiahmoo Community Pride Model Recycling Project.

Eco-Clean was only going to supply the equipment, White Rock was going to fund the operation and Semiahmoo would provide the services.

It would appear from the evidence that Doonan and Sullivan had the idea for the 3 bin multi-material recycling system. They wanted the government to pick-up at least some of their capitalization costs so that they could develop a recycling box that could be sold to the Purchasing commission who would in turn sell to other municipalities. It was proposed that the Purchasing Commission accept their recycling box as the standard for the province thereby acquiring a considerable advantage over any competition. This was a benefit and could be construed as such.

In granting the money to Semiahmoo, Reid seems to have abridged many of the guidelines for GO B.C. funds including:

1. No application was ever submitted by Semiahmoo for any multi-material recycling.

2. No financial plan was provided.

3. Semiahmoo had not received a contract from White Rock and therefore not assured of funding for operation costs.

4. Funds were to be paid 50% when equipment was ordered with the remaining 50% when the equipment was received.

5. 100% of the costs of the project were approved.

In addition there would appear to be irregularities with respect to:

1. 100% funding of the computer program for Semiahmoo.

2. Confusing at least with respect to the presentation of the cheques at the White Rock Council meeting.

3. The timing of the purchase order from Semiahmoo at Eco-Clean and subsequent transfer of all the money.

4. Personal notes of Reid granting the $277,065 to Semiahmoo in the absence of an application.

Although it is unclear the direct or indirect benefit to Reid, it might reasonably inferred that he was conferring a benefit to his close friends Doonan and Sullivan.

A jury might be left to speculate the reasons for Reid's irregular action, but none the less there is sufficient evidence upon which a jury properly instructed might reasonably convict.

This case has given me a great deal of concern and I have pondered long over it. While I have a distinct paucity of enthusiasm for the prosecution, I am not able to arrive at a fixed and firm conclusion that the prosecution is bound to fail as a matter of law.

In giving any opinion of this nature, there will be those who will say that the decision to prosecute or not prosecute was motivated for improper political considerations. I fear that the perception of improper consideration for political reasons could harm the general administration of Criminal Justice if this case did not proceed.

I cannot, for reasons expressed, categorically say that a Court could not find adversely to Mr. Reid on this charge. At the same time I find the whole matter an unduly theoretical one to attract criminal sanctions.

Mr. Reid's behaviour may be characterized as irregular and imprudent to say the least, but I am unable to discern any real evidence of what I categorize as dishonesty with an intention to obtain personal benefit. As previously mentioned it is my view that a charge may be made out without any direct or indirect benefit accruing to the accused. It would however make any decision to prosecute substantially easier if there were.

The Criminal law has a number of functions, but I do not see its reach as extending to the facts disclosed herein. For these reasons I would therefore exercise my prosecutorial discretion and not proceed with any charges.

MJC/yg

Province of British Columbia
Ministry of Attorney General
REGIONAL CROWN COUNSEL

MEMORANDUM

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DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 10
DATE: May 4, 1990
RDH

January 17, 1990

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

Re: William Earl Reid et al

I have completed my review of the Royal Canadian Mounted Police investigation into the above noted file.

The Commercial Crime Section of the R.C.M.P. has examined the allocation of certian grant monies by the Government of British Columbia to personal friends of the Honourable William Earl Reid (REID). You have asked that I provide your office with a legal opinion, using our standard charge approval criteria, on the issue of whether or not criminal charges are appropriate herein.

In reaching my opinion I have examined the following:

1. the R.C.M.P. investigation completed by Inspector E.C. MacAulay of the Commercial Crime Section, including 25 appendices.

2. Transcripts, in a total of six volumes, from the Comptroller General's Inquiry held in the City of Vancouver pursuant to the Financial Administration Act and the Inquiry Act.

3. The subsequent report of the findings of the Comptroller General.

In additon to the above I have had the benefit of direct conversations with Inspection E.C. MacAulay, Ace G. Henderson, Esquire, a barrister with the law firm of Davis & Company who acted as counsel to the Comptroller General during the above mentioned hearings, and David Hooper, C.A., a forensic accountant who was hired to assist the Comptroller General during his investigation.

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The facts and law surrounding my opinion are set out herein in considerable depth. The proposal for criminal breach of trust charges requires a detailed examination of the facts herein as well as an examination of the development of the law, from a historical perspective. The criminal law relating to these allegations has not developed in a particularly sophisticated or complete way and accordingly I have taken some considerable care in setting it forth and relating it to the facts of this case.

FACTS

GO BC Grants

On October 17, 1988, the Government of B.C. announced the creation of a program called Growth & Opportunities British Columbia (GO BC) which was designed to fund the capital costs of initiatives by non-profit societies and municipalities in the areas of environmental enhancement, culture, heritage, recreation, multi-culture, and social/health. Funding of $12 million was allotted for the remainder of 1988 and $50 million was allocated for each of the three succeeding calendar years, for a total of $162 million.

The program was funded by the transfer of revenue from the B.C. Lottery Fund as provided for by the Lottery Act, R.S.B.C. 1979, c.249, s. 7(b).

There were some general guidelines established and published in a "GO BC" brochure, these included:

- up to one-third of the project could be funded to a maximum of $1 million per project,
- applicants must have secured on-going funding to sustain the proposed projects,
- funding available for one-time operating costs but not for operating costs,
- applications were to include a financial plan for the project, and
- funds would normally be disbursed in three instalments,

  (i) one-third when the contract was let or the work begun,
  (ii) one-third when the project is half complete, and
  (iii) the balance when the project is fully completed and audited statements of expenditures are provided.

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Despite these guidelines "GO BC" was designed to provide a maximum of program flexibility. The fund was discretionary with REID dealing directly with the "GO BC" program. REID had sole and final responsibility for deciding which of the grant applications would be approved and to what monetary level.

A review by the Internal Audit Branch of the Office of the Comptroller General indicates that a total of 208 applications were approved by REID from October, 1988 until September, 1989. A total of $35,375,286.00 was approved.

The auditor's review showed that on many occasions REID exercised his broad discretionary powers to award grants which did not meet the program guidelines published in the above mentioned brochure.

There is no suggestion of any improprieties in the allocation of the 206 of the 208 GO BC grants.

The two grants that are the subject of this allegation were both awarded to the Semiahmoo House Society (SEMIAHMOO). The first grant was titled "Semiahmoo Community Pride Model Recycling Project: (RECYCLING GRANT) and the second, "Semiahmoo House Society's Computer Grant (COMPUTER GRANT).

RECYCLING GRANT

On March 9, 1989, the Corporation of the City of White Rock (WHITE ROCK) prepared an application for a GO BC grant for a multi-material recycling program. The application showed an estimated total cost of $164,700.00 for the project and a request for GO BC funding in the amount of $95,700.00. The monies were to be used by WHITE ROCK to cover the capital and first year operating expenses of a city-wide recycling program and a civic pride clean-up campaign.

This application was amended by correspondence from WHITE ROCK, dated April 27, 1989, requesting an additional $20,000.00 for litter containers.

REID reviewed the WHITE ROCK application on March 21, 1989, and discussed it with Gordon Hogg (HOGG), the Mayor of White Rock on March 23, 1989.

Prior to receiving the WHITE ROCK grant, REID had a meeting on March 12, 1989 with George Barry Doonan (DOONAN) and Richard William Sullivan (SULLIVAN) to discuss the possibility of DOONAN

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and SULLIVAN entering the waste recycling business. DOONAN was REID's campaign manager during the 1986 Provincial Election and SULLIVAN was a close personal friend of REID and was living in a common-law relationship with REID's daughter.

On March 13, 1989, REID met with HOGG and Alanna Hendren (HENDREN), the Executive Director of SEMIAHMOO, and discussed the possibility of Provincial Government funding for a paper recycling truck. SEMIAHMOO is a non-profit society dedicated to assisting the mentally handicapped. During the early part of 1989 they were receiving $800. per month from WHITE ROCK to help defray cost for the pickup of waste paper for recycling.

During March, 1989, SEMIAHMOO and WHITE ROCK had discussions relating to multi-material recycling but these were at a preliminary stage. If WHITE ROCK had intended to commence a multi-material recycling program it would have put the pickup contract out to public tender.

In early 1989, DOONAN and SULLIVAN investigated the possibility of the fabrication of a mold to manufacture plastic recycling containers. A similar bin was being manufactured in the United States and was in use in San Jose, California and Bellingham, Washington. No mold existed in British Columbia.

The recycling containers were similar to plastic milk crates and were designed to be stacked on top of each other. Gaps in the side would enable the householder to place different types of recyclable material in each bin.

On April 11, 1989, REID and his Ministerial Assistant Hans Schinz (SCHINZ) met with HENDREN. Ms. Hendren details this meeting in her statement:

> "On April 11, 1989, Mr. Reid and Hans Schinz dropped by the office, unexpectedly. Mr. Reid asked generally how things were going and discussed general issues about supported employment. He mentioned that a community group in Vernon had made an application to GO BC that he was particularly impressed with and interested in. This involved a street clean-up program wherein a street-cart was purchased and employees pushed it around town, cleaning up litter. He indicated his eagerness to possibly have this type of program in White Rock and said that he immediately thought that this may be the type of job that could be passed on to some of our clients. He indicated that he would investigate this further and get

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> back to us if we were interested, which we were. He also asked how our negotiations re: recycling were going with the City of White Rock. These negotiations had been going on since the fall of 1987 and the Society was feeling generally frustrated with their inability to reach an agreement. Some media attention had been paid to recycling in White Rock and our involvement. I expressed our exasperation with the City and indicated our interest in continuing, but that things were still dragging out. He asked if we were discussing multi-materials recycling and I indicated that we had proposed a multi-materials recycling project to White Rock in the spring/summer of 1988, but that they had rejected this as being too costly both in terms of capital costs and operating costs. At this time we were discussing paper pickup only. He indicated that he was so much in favour of environmental type programs that he would be willing to fund portions of a multi-material recycling program that White Rock would not. I indicated that our operating expenses could be offset considerably if we could afford to purchase rather than lease a truck. He said that the funding of capital items would make this even easier."

On April 15, 1989, DOONAN and SULLIVAN met with REID in his White Rock constituency office to discuss recycling. DOONAN and SULLIVAN requested REID's assistance in arranging a meeting with Provincial Government officials to promote their idea.

On May 15, 1989, Jarie Holdings Ltd., DOONAN's wife's company, whose name was changed on July 14, 1989, to ECO-CLEAN Waste Systems Ltd. (ECO-CLEAN), received an estimate of $84,500.00 for the manufacture of the mold referred to above. The estimate also provided prices for the manufacture of the bins ranging from $5.45 each for 5,000 bins to $5.28 each for 50,000 bins.

As a result of the April 15 request by DOONAN and SULLIVAN, REID arranged a meeting on May 18, 1989 in his office in the Parliament Buildings, Victoria. Present at this meeting, in addition to DOONAN, SULLIVAN and REID were Jim RABBIT (M.L.A. for Yale-Lillooet and Chairman of an Inter-Ministry Task Force on Recycling), Jim VAN (Ministerial Assistant to the Minister of Government Management Services - the Ministry responsible for the Purchasing Commission), Jon DONALD (REID's Executive Assistant).

This led to a meeting on May 25, 1989, where DOONAN and SULLIVAN met Peter LAIPNIEKS of the Purchasing Commission.

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The content of the May 18, 1989, meeting was discussed during the Inquiry of the Comptroller General. The examinations of these persons was under oath and accordingly Section 13 of the Canadian Charter of Rights and Freedoms would apply. However the contents are useful for the purposes of this opinion:

On page 388 of the transcript of the hearing SULLIVAN said:

> "...and generally explained how the system worked and how it would be beneficial to use this system as a groundwork for a model project for the Province of British Columbia ultimately hoping that every municipality would standardize and use that system."

On page 389 of the transcript SULLIVAN said:

> "...and we were also looking for some research and development money in the neighbourhood of $50,000, because the mold would cost us in excess of $100,000."

On page 303 of the transcript DOONAN said:

> "We were told that a pilot project could be funded by GO B.C."

(Q) To what extent?

(A) I think a hundred percent.

The Chairman:

> "Who was it that mentioned that? Was that Mr. REID?"

(A) I believe so.

On page 5 of Mr. REID's transcript the following exchange took place:

(Q) Do you recall being aware that they were going to be approaching White Rock Council and talking to them?

(A) Yes---when we talked about potential communities where a pilot model project could be implemented, I referred to my own because I really had a vision of this Community Pride project and recycling was a component of it and my community was one which I was anxious to implement the pilot model project...

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LAIPNIEKS' evidence was that on May 25, 1989 he met in a restaurant with DOONAN, SULLIVAN and SCHINZ. DOONAN and SULLIVAN indicated they wanted to make a mold for the manufacture of plastic recycling boxes.

On pages 636 - 638 of Laipnieks' transcript, discussing briefing notes prepared by the Purchasing Commission, the following exchange took place:

(Q) Looking at the next note...ECO-CLEAN indicated a need for $50,000 to $100,000 in development funding over the $30,000 already invested.

(A) Uh huh.

(Q) They indicated to you that they had invested $30,000 in this?

(A) Yes, they didn't volunteer that. I somewhat insisted on that. "What have you spent so far?" I just wanted to see that this is a blue sky proposal, which , as you can appreciate, we often get, and they said they spent $30,000 at that point, and in my view, that gave some credibility. I never asked them to substantiate it, though, at that point.

(Q) Okay, and I was going to ask you that. That was the next question.

(A) No. I asked them to substantiate the whole thing with a proposal, which never came.

(Q) ...and you told them that the Purchasing Commission needed an order from a municipality?

(A) Yes.

(Q) And they had to produce that?

(A) Absolutely.

On page 643 Laipnieks continued:

(Q) You've mentioned that the design would have to be accepted by municipalities and an order received before you could proceed further.

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(A) ...the proposal from ECO-CLEAN was they wanted the bin and they had a notion that the Purchasing Commission could accept their bin as the standard and I made it very clear to them that we have no authority. Its a municipal decision and they would have to win the business on a competitive basis at the municipal level--the Provincial Government had no authority to adopt one system over another.

SULLIVAN's evidence at the hearing was that DOONAN and SULLIVAN has spent less than $1,000 on research and the rest of the $30,000 was time of both DOONAN and SULLIVAN. Page 789 of SULLIVAN's transcript reads:

(Q) How much had been invested in the company, ECO-CLEAN, by the time you met with Mr. Laipnieks?

(A) A very small amount of capital, mostly time.

(Q) Less than a thousand dollars?

(A) Probably yes.

(Q) And what would you put the time cost at?

(A) February, March, April, May, four months. Two guys' time at four months - $40,000.

DOONAN and SULLIVAN both gave evidence that at the May 18th meeting they believed that the Provincial Government had accepted their recycling program as a pilot project. They were sure that the funding was theirs. They only had to find a municipality to which to sell the program.

On June 2, 1989, HOGG and other officials of WHITE ROCK met with DOONAN and SULLIVAN, who presented their three bin multi-material recycling proposal. WHITE ROCK was impressed with the presentation and invited DOONAN and SULLIVAN to attend a City Council meeting later that month to again demonstrate their system.

On June 19, 1989, a presentation was made to WHITE ROCK City Council and the response was positive, but no resolution was passed. As a result of this meeting WHITE ROCK amended their earlier application for a GO BC grant to include the three bin stacking system advocated by DOONAN and SULLIVAN.

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On June 23, 1989, SEMIAHMOO provided the Minister with a "Preliminary Proposal" relating to "White Rock Multi-Material Recycling Project". This proposal included a budget for operating costs. It is indicated in the proposal that WHITE ROCK would be buying recycling bins.

Also on June 23, 1989, a letter was sent from HOGG to REID stating that WHITE ROCK was impressed with the ECO-CLEAN presentation on recycling. This letter was sent to the Minister at the request of SULLIVAN. Pages 456-458 of HOGG's transcript set out his recollection of the discussions with SULLIVAN:

> (Q) In any event, you left with Mr. SULLIVAN the impression that WHITE ROCK was in no sense committed to hiring ECO-CLEAN?
>
> (A) I made it very clear to him, because he was--wanted very much for there to be a statement in writing that the Committee and Council was committed to following with that system, and I made it very clear to him that the Committee had only received the information; in fact, checked with the clerk to have again the --motion read to me, and the motion that was passed, which was again only that the information be received and that no commitment was made with respect to that.
>
> (Q) Did he express some disappointment or surprise?
>
> (A) No, I -- he just reiterated that he would like that information conveyed to Mr. REID.
>
> The Chairman:
>
> "Did he indicate at that point any urgency in that information being provided to Mr. REID?"
>
> (A) Yes, he did.
>
> The Chairman:
>
> "And did he, in fact, ask that a letter be provided on that day?"
>
> (A) Yes, he did.

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Mr. Henderson:

(Q) From the point of view of WHITE ROCK and yourself, was there any particular urgency about this?

(A) The only urgency was urgency which I perhaps construed, and that was that if there was an opportunity to strike in terms of the funding, that we wanted to have all the documentation that was necessary before the Minister or whomever was going to make the decision. We wanted to ensure that we provided everything necessary so that we weren't delaying a decision in any fashion.

(Q) Once you got a receptive audience for your application, you wanted to take--

(A) Take advantage of that; that's right.

The Chairman:

> "...was it your impression from your conversation with Mr. SULLIVAN that the provision of this letter would enhance the probability of WHITE ROCK receiving a grant for this recycling concept?"

(A) Yes, it was.

The Chairman:

> "So it's in your mind on the 23rd a letter that you would provided to Mr. REID would, in fact, enhance the chances of WHITE ROCK receiving this grant that you had applied for?"

(A) That was certainly the impression that--that Mr. SULLIVAN was conveying to me.

It is obvious that by June 23, 1989, a clear difference of understanding existed between WHITE ROCK and ECO-CLEAN. Both felt they were about to become the beneficiaries of a GO BC grant. DOONAN and SULLIVAN believed the recycling project would be their pilot project and a launching pad into other municipalities. WHITE ROCK felt it would fund the operation and an organization such as SEMIAHMOO would service it. WHITE ROCK also felt it would be obliged to put the job out to public tender and ECO-CLEAN would have bid against other competitors.

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On page 409 of SULLIVAN's transcripts, the following exchange took place:

(Q) And you've already told us that you had no intimation at any time that WHITE ROCK might want to put the job out for tenders?

(A) No, not at all, and I didn't--and I didn't think that WHITE ROCK was in a position to put it out to tenders. It was a project being funded by the Provincial Government as a pilot project and they were getting as opposed to --to getting 30 percent funding through GO BC, they were getting a hundred percent funding through GO BC.

On pages 346 and 347 of DOONAN's transcript, the following exchanges took place:

(Q) It's our understanding that the City of WHITE ROCK would have felt compelled to call for tenders on this project, which would have meant that you would have had to bid possibly against other competitors. Were you aware of that fact at any time?

(A) Well, that--that would be a total misunderstanding on the part of WHITE ROCK because WHITE ROCK was merely the recipients of a pilot programme. I stated earlier that I would have gone to--to any town that was of a one-truck size. I mean WHITE ROCK had nothing. How could they go to tender? They either bought my programme with government funding or they weren't the recipients of it. It was--that was black and white, cut and dried. They were never given a choice to go to tender. They were asked by me and by Mr. SULLIVAN if they wanted to be the recipients of the pilot programme, and they wanted to be, and as far as we know, they amended their application for funding to 18,000 bins, which was our multi-bin system. There was no other presentations made to them by anybody else to my knowledge on multiple-bin systems. We were the players.

(Q) And it's my understanding that the evidence will be that WHITE ROCK's position was that if they were to be the recipient of the quarter million dollar grant, they would dispose of it after calling for public tenders.

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> (A) Well, WHITE ROCK weren't given that choice. They wouldn't have been the recipient of the pilot programme to go to tender, because after all I had already received the project. I wasn't about to now go to tender. I didn't need a supplier. I was the supplier.

Mr. Peter Martin ("MARTIN"), Executive Director of Public Programmes, Ministry of Tourism and Provincial Secretary, was the person responsible for administering GO BC. MARTIN gave evidence to the inquiry that he recalled a meeting with the Minister, prior to the approval of the grant to SEMIAHMOO. At this meeting he understood from the Minster that the proposed suppliers of the 3-bin recycling system had a "cost barrier" that could cause some problems. MARTIN also recalls suggesting to the Minister that if the grant was made to a non-profit society, rather than to WHITE ROCK, that would avoid the possibility of the grant recipient having to put the purchasing of the equipment out to public tender thereby delaying the project.

REID gave evidence that calling for public tender was "never a consideration" in his discussions with WHITE ROCK.

On Monday June 26, 1989 REID instructed his staff to prepare an approval package for a GO BC grant for the "Semiahmoo Community Pride Model Recycling Project" which he required for that date as he planned to announce it at a meeting of the WHITE ROCK Council that evening. The staff, working from a facsimile copy of four pages of notes in REID's handwriting, opened a file and prepared a letter to the applicant (which they determined to be the SEMIAHMOO HOUSE SOCIETY), a press release, the approval form, and a large display cheque. REID's notes had indicated a grant of $287,065 but the approval was for $277,065 which the staff obtained by totalling the various items to be funded by the grant:

1.	18,000 self-stacking curbside 3 colour multi-material boxes	$187,700.
2.	27 yard International 4700 Haul All packer curbside recycler	$ 78,365.
3.	Easy Tote street cart complete with tools	$ 500.
4.	100 Eco-Clean Waste Systems curbside litter containers	$ 10,500.
		$277,065.

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MARTIN directed his staff to mark the WHITE ROCK application as "deemed withdrawn". MARTIN did not receive any instructions from REID or WHITE ROCK to withdraw the application. He felt all parties knew what was going on and that WHITE ROCK agreed with the choice of SEMIAHMOO receiving the grant.

MARTIN did have concerns about the application from SEMIAHMOO. He says in his statement to the R.C.M.P.:

> "I was concerned about the apparent deficiencies in that there was no project budget, no financial statements from the Society, and no application form. I was also concerned that the 100% funding would be a difficult precedent to bear. Although the deficiencies were of concern, I had become hardened with respect to applications from the Minister's constituency. Although the 100% funding was a very bad precedent, there may have been an element of urgency to get this project underway.
>
> I also noted that all the smaller value items appeared to be brand names with the largest portion, the recycling boxes, was not. I do not recall identifying any research and development ingredient in the direction but was aware that there were startup costs and we were prepared to pay a premium price to get this project underway. The lack of a standard application was rare but not unique to this file. Later, as I learned more about these matters, I was puzzled that the Minister would have approved a grant with no existing contract between the Society and WHITE ROCK."

MARTIN was not aware that the principals of ECO-CLEAN had a close personal relationship with REID. A verbal condition of the grant to SEMIAHMOO established by REID was that ECO-CLEAN must be used as the supplier of the recycling truck, bins and litter bins.

COMPUTER GRANT

On June 7, 1989, the Semiahmoo House Society applied for a GO BC grant to partially fund a computer-based training program for mentally handicapped persons. The total cost of this project was $23,112.05 and the Society had obtained a grant from the Vancouver Foundation for 50%, planned to raise 17% through its own fundraising and sought the remaining 33% ($7,704.02) from GO BC.

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The application has the total project cost ($23,112.05, or 100%) circled and the following notation beside it: "APPROVED Bill Reid June 15, 89".

On June 26, 1989 the staff were also requested to prepare the approval package for this application for presentation that evening. The staff prepared the approval form, a letter to the applicant, and a press release.

MARTIN was surprised to find that the total cost of this project had been approved. SEMIAHMOO had only asked for $7,704.02 but received $23,112.05. MARTIN even telephoned Jon Donald to confirm REID's intention to approve the entire amount. He says in his statement, "...my recollection that this (the total amount) was confirmed which I found exasperating as it tells the public that the government had money to throw away."

THE ANNOUNCEMENTS

On June 26, 1989 REID instructed SCHINZ, to contact DOONAN, SULLIVAN, HENDREN and Allard Van VEEN (of Outdoors Unlittered) to invite them to be at the White Rock Council meeting that evening. All were contacted and attended.

The agenda for the meeting did not include announcements by the Minister of Tourism and Provincial Secretary but the Mayor acknowledged REID's presence and asked if he had any announcement(s). REID introduced DOONAN, SULLIVAN, HENDREN, and VAN VEEN. He then announced the awarding of the $23,112 grant to the Society and a grant of $277,065 which City officials, (the Mayor, Administrator and Engineer) all concluded was their revised GO BC application of June 19, 1989. HENDREN understood her Society had received the grant (even though the Society had not applied for such a grant and the announcement was her first indication of its existence).

Prior to the Council meeting, REID had informed HENDREN that he had approved 100% funding by GO BC for the proposed computer project and provided her with a press release indicating that the Society would be receiving $277,065 for a multi-material recycling program. REID also indicated that DOONAN and SULLIVAN would attend at her office the following morning to obtain a purchase order. Following the meeting, REID presented HENDREN with a large display cheque (showing that GO BC was paying $277,065 to the Semiahmoo House Society) on the sidewalk near White Rock City Hall.

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THE PURCHASE ORDER

On the morning of June 27, 1989, DOONAN and SULLIVAN attended at SEMIAHMOO's office with handwritten details which they gave to the Society's Administrative Assistant, Debra FREITAG, to copy directly onto a purchase order. When the total amount of the items did not agree with the exact amount of the grant, one of the men did some minor adjustments to the figures so that it totalled $277,065. A purchase order, containing the following detail, was then prepared by FREITAG and signed by HENDREN:

18,000 Eco-Clean Multi-Material recycling bins	$ 187,666
1 International 4700 Series Cab & Chassis, complete with 27 yard Haul-All Curbside Recycler	$ 78,365
1 Eco-clean Easy Tote Street and Parking lot Hand Cart	$ 500
100 Eco-Clean Hi-Cube Rotation Molded Waste Containers	$ 10,500
	$ 277,065

The amount calculated for the 18,000 recycling binds included the sum of $50,000 for the preparation and purchase of the necessary mold for the bins. Upon completion the mold would have belonged to ECO-CLEAN.

On June 5, 1989 ECO-CLEAN Waste Systems Ltd. had written to REID requesting 50% of the anticipated $100,000 it would cost to manufacture a suitable mold. There appears to be no written reply to this request.

There was no separate component for research and development funds in either REID's handwritten notes (that served as an 'application' for the $277,065 grant) or in the detail of the purchase order.

Sometime prior to June 26 MARTIN discussed the issue of developmental costs with REID. He says in his statement:

> "Sometime prior to June 26, 1989 I had a private conversation with Mr. REID in the Minister's office late in an afternoon, possibly after a regular meeting. The Minister raised the issue of business development being

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> funded by the GO BC program in the context of securing a "made in B.C." 3-box system for the Civic Pride Project. I explained that developmental costs are not precluded but it would be breaking new ground. I may have given the Minister advice that we could absorb some start-up costs in a GO BC grant by accepting a premium price for the boxes if they were important to the success of the project. I don't recall a specific discussion of how that would be accomplished whether as a separate cost or incorporated into the overall price but the notion of accepting a price which would enable this particular product to be made in B.C. for the project was definitely there on the day. I advised the Minister that it may be better to work through a non-profit organization, rather than a municipality, and the advantage may have been to avoid the tendering process that municipalities usually follow. At the time of this discussion I was not aware of any association between the Minister and the principals of ECO-CLEAN. My understanding of the project, at that time, was that it had a number of participants with no clear "owner"."

DISBURSEMENT OF FUNDS

On July 5, 1989 SCHINZ called HENDREN at the Semiahmoo House Society and told her that the GO BC cheque for the first disbursement on the grant was available at REID's Constituency Office. An employee was dispatched to obtain the cheque. Shortly after SCHINZ's call, SULLIVAN called the Society and stated that he had heard the cheque had arrived and asked to be contacted as soon as the cheque to ECO-CLEAN was prepared and that he would pick it up.

On July 5, 1989 the Society deposited the cheque from the Province of B.C. in the amount of $138,532, into its bank account. On the same date the Society issued a cheque in the amount of $138,532 to Eco-Clean Waste Systems Ltd. SULLIVAN picked up the ECO-CLEAN cheque later that same day. Also on July 5, 1989 Eco-Clean Waste Systems Ltd. opened an account at the Bank of British Columbia, 8701 - 120 Street, Delta, B.C. with a deposit of $138,532.

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There have been four cheques written on this account:

NO.	DATE	PAYEE	AMOUNT
1.	July 5, 1989	Air Arms Fasteners & Ind. Ltd.	$ 35.49
2.	July 11, 1989	Rollins Machinery	1,000.00
3.	August 24, 1989	Co-Van	2,000.00
4.	September 26, 1989	Seaton Promislow Trust Account	135,496.51

During July, 1989 DOONAN and SULLIVAN continued their discussions with the Purchasing Commission, attempting to have the Commission accept their recycling box as the standard for the Province. DOONAN and SULLIVAN hoped they would become the sole B.C. manufacturer for the three-bin system.

David Hooper, C.A., an internationally recognized expert in forensic accounting was hired by the Comptroller General to examine the circumstances surrounding the GO BC grant to SEMIAHMOO. In his report, dated December 6, 1989, he writes:

> The Minister's (REID) involvement ensured that ECO-CLEAN did not have to bid competitively for the WHITE ROCK project. By awarding the GO BC grant to SEMIAHMOO, who had not applied, instead of to WHITE ROCK, the Minister directed the purchaser to the supplier and provided ECO-CLEAN with $50,000. to assist in the purchase of a mold.
>
> On page 795 of the transcript SULLIVAN, replying to a question from the Chairman said:
>
> "Well, you know, we could have always supplied White Rock with a source not made in British Columbia if worst came to worst."
>
> This begs the question of what was to happen to the $50,000 Research and Development money. It also undermines the purpose of the $50,000 in ensuring that ECO-CLEAN was a B.C. manufacturer.
>
> The Minister, in his evidence, said that if ECO-CLEAN did not obtain a mold and purchased bins elsewhere, the $50,000 would be returned by ECO-CLEAN to the Government (see transcript pages 998-999). ECO-CLEAN had received the money from SEMIAHMOO who had in turn received the money from the GO BC funds. The grant documentation does

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not include any reference to the $50,000 for Research and Development. Such a recovery would, in my opinion, be difficult to obtain unless ECO-CLEAN voluntarily returned the money.

The Minister, in his evidence, states he was very enthusiastic about recycling. He was impressed with the three bin system being promoted by DOONAN and SULLIVAN and he wanted to fast track the project. The decisions on the project were made, however, with very little hard evidence on capital costs, operating costs or the ability of any of the parties to perform.

THE LAW

The R.C.M.P. investigation proposes two criminal charges; fraud and breach of trust by a public officer.

FRAUD

There are numerous sections in the Criminal Code that specifically deal with fraud including Section 122, Breach of Trust by a Public Officer, which will be dealt with later in this opinion. The general offence of fraud is described in Section 380(1):

> 380.(1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security,
>
> (a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding ten years, where the subject-matter of the offence is a testamentary instrument or where the value of the subject-matter of the offence exceeds one thousand dollars; or
>
> (b) is guilty
>
> (i) of an indictable offence and is liable to imprisonment for two years, or
> (ii) of an offence punishable on summary conviction
>
> where the value of the subject-matter of the offence does not exceed one thousand dollars.

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Elements of Fraud

(a) "by deceit, falsehood or other fraudulent means"

R. v. Olan, [1978] 41 C.C.C. (2d) 145 is the leading case on this part of the section and the bottom line appears to be that "fraudulent" means "dishonest":

> "The words "fraudulent means" in s.338(1) include means which are not in the nature of a falsehood or deceit; they encompass all other means which can properly be stigmatized as dishonest." (p. 149)

(b) "whether or not it is a false pretence"

This clause seems to make any offence under Section 320 (false pretences) a fraud as well, so long as the subject matter fits both definitions (see infra).

(c) "defrauds the public of any person, whether ascertained or not"

This classic definition of "defraud" is found in Re London and Glove Fin. Corp. Ltd., [1903] 1 Ch. 728 at 723:

> "To defraud to deprive by deceit: it is by deceit to induce a man to act to his injury. MOre tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."

R. v. Olan puts it more succinctly: "to succeed, the Crown must establish dishonest deprivation" (p.150). Further, "the element of deprivation is satisfied upon proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim" (loc.cit.). Thus, the Crown does not need to prove actual loss, merely risk.

(d) "of any property, money or valuable security"

Before assuming that these terms include almost anything, look at the definitions of "property" and "valuable security" in Section

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2 of the Code. While the definitions begin with "includes" the ejusdem generis and exclusio rules probably limit the meanings of these terms considerably. Defrauding somebody of a service is not covered by this section. "Intellectual" property is still the subject of debate (see Stewart and Offley, supra). A prescription is not "property", merely a "direction", according to R. v. Falconi, (1976) 31 C.C.C. (2d) 144 (O.C.C.). Credit is not covered specifically in Section 362 but would be a problem under Section 380. Generally speaking, when one fraudulently obtains only the right to do something or to have something done, problems arise in applying this section.

(e) "fraudulent intent"

What is the standard or test for "dishonesty"?

The Ontario Court of Appeal, in R. v. Black and Whiteside (1983), 5 C.C.C. (3d) 313 at 318-319, applying R. v. Feely [1973] I.Q.B. 530, suggests that dishonesty should be measured in relation to the standards of ordinary, decent people.

Proof of dishonesty requires not only proof that the act be judged objectively dishonest, but also proof that the accused knew the act was dishonest and intended to act dishonestly. This fundamental principle has been restated recently by the Ontario Court of Appeal in R. v. Bobbie (1988) 43 C.C.C. (3d) 187.

OPINION

It is my opinion that WHITE ROCK was not defrauded of money, property or valuable security by any act of deceit or falsehood. Nor was WHITE ROCK defrauded by "other fraudulent means", as defined by Mr. Justice Dickson in R. v. Olan, supra, namely, "dishonest, deprivation".

Although the circumstances leading up to and the granting of the $277,065.00 from GO BC to SEMIAHMOO can be characterized as being irregular and improper it is my opinion that there has been no deprivation suffered by WHITE ROCK. Once again, it is to be kept in mind that deprivation includes prejudice or risk of prejudice.

REID was the Minister responsible for the GO BC program and gave final approval to all grants made under it. It was up to REID whether to approve or reject any application for money under the program whether the general guidelines were met or not, he had that right and that responsibility.

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There are many unusual circumstances surrounding the $277,065.00 grant, however it should be noted that:

1. The City had no legal right to any money from GO BC.
2. The application submitted by the City was never approved.
3. It was the sole discretion of REID whether to grant or reject any application.

It is my opinion that you cannot deprive a person of money, property, or valuable security, if that person does not have a legal or equitable right to the property, nor, was WHITE ROCK prejudiced in any way and was free to re-apply, which they apparently have done.

BREACH OF TRUST BY PUBLIC OFFICER

Breach of Trust by a Public Officer is an offence pursuant to Section 122 of the Criminal Code:

> "122. Every official who, in connection with the duties of his office commits fraud or a breach of trust is guilty of an indictable offence and liability to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person. R.S., C. c-34, s.111."

ELEMENTS OF THE OFFENCE

(a) "official" and "office"

"Official" is defined under Section 118 of the Criminal Code:

> "official" means a person who
>
> (a) holds an office, or
> (b) is appointed to discharge a public duty;
>
> "office" is also defined under Section 118 of the Criminal Code:
>
> "office" includes
>
> (a) an office or appointment under the government,
> (b) a civil or military commission, and
> (c) a position or an employment is a public department.

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Many of the cases discuss whether an accused falls within the definition of being an official. See The Queen v. Sheets (1971) 1 C.C.C. (2d) 508 (S.C.C.), R. v. Robillard, R. v. Charbonneau (1985) 18 C.C.C. (3d) 266 at 272 (Que.C.A.), Rex v. McMorran (1948) 5 C.R. 338 (Ont. C.A.).

These cases deal with appointed positions and therefore whether or not the accused falls within the definition of the Code.

In R. v. Fraser [1983] N.W.T.R. 280 and R. v. McKitka (1982) 66 C.C.C. (2d) 164, both accused were elected officials and were held to fall within the definition.

The Criminal Code also requires that the alleged breach of duty be "in connection with the duties of his office". It would not be an offence under Section 122 if the alleged breach was not directly related to his position as an official. If he were to commit an office in relation to a private business that had no direct or indirect connection with his public duty then, in my view, it would not be a breach of Section 122.

(b) "commits fraud or a breach of trust"

A breach of trust is defined by Underhill on Trust and Trustees, 9th ed. 1939, page 3 as follows:

> "Any act, or neglect in the part of a trustee which is not authorized or excused...by law, is called a breach of trust."
>
> Rex v. McMorran (1948) 5 C.R. 338 at 345.

A breach of this section may be committed in two way, (i) by fraud, or (ii) a breach of trust.

(i) Defining "fraud"

It is noteworthy that there are no reported cases that deal directly with the aspect of fraud under this section. Fraud has a very broad meaning as interpreted by the S.C.C. in R. v. Olan supra, and includes any "dishonest deprivation". As discussed earlier a jury might have no problem determining what is dishonest, as it is their decision. However, there is no evidence to suggest that WHITE ROCK was deprived or even prejudiced. If anyone was deprived it would the GO BC program, and they are not complaining.

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If the test for fraud under Section 122 is the same as set out by Dickson, J.A., in R. v. Olan, then it would logically follow that any accused would be charged under Section 380(1) of the Code, which has greater penalties than under Section 122. This perhaps explain why the cases do not specifically deal with fraud under Section 122.

(ii) Defining "breach of trust"

The word "trust" as used in Section 122 of the Code is defined in The Shorter Oxford English Dictionary 3rd ed. (1977) as:

> "The confidence reposed in a person in whom the legal ownership of property is vested to hold or use for the benefit of another."

It is clear that the offence includes a breach of public confidence. The court in R. v. Fraser [1983] N.W.T.R. 280 at 281 in reviewing several authorities states:

> "...the offence was a breach of public confidence; and in my view s. 111 of the Code should be given very wide interpretation."

The limits of this interpretation can best be summed by Wells, J.A., in R. v. Campbell supra, when he states:

> "In our opinion s. 103 is wide enough to cover any or each of the appropriate standard of responsibility and conduct demanded of the accused by the nature of his office as a senior civil servant of Crown..."

This definition must be considered the high water mark of breach of trust. In order to appreciate this definition it would be helpful to examine its historical roots. In coming to this opinion, Wells, J. A., carefully examines the history of the section as follows:

> "103...Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person."

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This section which, in slightly different form, appeared in the first version of the Criminal Code which was passed in July of 1892 [c.29], provided that it should come into force on the first day of July, 1893. The section is one which appeared in some of the later drafts of a proposed Criminal Code generally associated with the name of Sir James Stephen and stems from the famous decision of Lord Mansfield in the case of The King v. Bembridge, which was reported originally in (1783), 3 Dougl. 327, and is more conveniently found in 99 E.R. 679. Bembridge was an accountant in the office of the Receiver-General of the Forces and it was alleged that he had wilfully and fraudulently refused and neglected to disclose any charges upon a former Receiver and Paymaster of the Force which covered certain substantial items which had been omitted from the accounts, although he knew that several sums of money were not included in the said accounts. Lord Mansfield described Bembridge's position as one of an office of trust and on page 332 Lord Mansfield observed:

> "As to the motion in arrest of judgment the objection is, that this is a civil injury, and not indictable, and it is said that there is no precedent. The law does not consist of particular cases but of general principles, which are illustrated and explained by these cases. Here there are two principles applicable; first, that a man accepting an office of trust concerning the public, especially if attended with profit, is answerable criminally to the King for misbehaviour of his office; this is true, by whomever and whatever the way the officer is appointed. In Vidian (Vidian's Entries, page 213) there is a precedent of an indictment against the custos brevium for losing a record. Secondly, where there is a breach of trust, fraud, or imposition, in a matter concerning the public, though as between individuals it would only be actionable, yet as between the King and the subject it is indictable. That such should be the rule is essential to the existence of the country."

Further down, towards the conclusion of his judgment, Lord Mansfield referred to the rule laid down by Mr. Sergeant Hawkins in the following words [page 332]:

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> "The rule is well laid down by Mr. Serji. Hawkins (Book ii, c.25, s.4) that all kinds of crimes of a public nature, all misdemeanors whatsoever of a public evil example against the common law, may be indicted; but no injuries of a private nature, unless they some way concern the King."

In the result, the application, which was an application in arrest of judgment, was dismissed. The two other Judges sitting, Willes and Buller, JJ. agreed with Lord Mansfield. Lord Mansfield also referred to what is known as an Anonymous Case, which was a decision of the Court of King's Bench in the second year of the reign of Queen Anne. It is found as Case 136 in Mod.Rep., vol.6., page 96, and is reported briefly as follows:

> "Per Curiam. if a man be made an officer by act of parliament, and misbehave himself in his office, he is indictable for it at common law, and any publick officer is indictable for misbehaviour in his office."

In the more recent case of R. v. McMorran, [1948] O.R. 304, 91 C.C.C. 19, 5 C.R. 338, Hogg, J.A., dealt with Section 103 which was then Section 160 of the Criminal Code, R.S.C. 1927, c.36. He described the charge in that case as follows [page 391 O.R., page 24 C.C.C.]:

> "The indictment presented to the Court charged that the accused McMorran was guilty on three counts of criminal misconduct in the use he made of his functions as Allocations Officer of the Wool Administration of the Wartime Prices and trade board."

It is quite clear, from reading the balance of Hogg, J.A.'s judgement that he regarded what is now Section 103 of the Criminal Code as derived from Lord Mansfield's decision in the Bembridge case which, in turn, partly rested on the decision of the Court of King's Bench in the Anonymous Case, which I have already referred to.

Earlier in Ontario, a similar problem was faced and dealt with in the case of R. v. Arnoldi (1892), 23 O.R. 201. It was a trial at Ottawa by Chief Justice Armour. The facts are summarized in the headnote:

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> "An officer in the public service of Canada having charge of the public dredging and whose duty it was to audit the expenditure therefore, used property of his own in connection with the dredging, having first placed it in the name of a third party, in whose name also he made out the accounts. No undue gains were made by him, but as such public officer he certified to the correctness of the accounts respecting the use of his said property as though for services rendered by contractors with the Government, and thereby received for himself a payment for those services."

This case was reserved by Chief Justice Armour sitting on Assizes at Ottawa. It is to be noted that the Criminal Code which contained the original form of Section 103 did not come into force until the first of July, 1893, and that, consequently, the matter was decided under the common law. The Code, however, was put forward substantially as a codification of the common law. The Chancellor's views as expressed after the Code had been passed but was not yet in force are, in my opinion of considerable weight and authority as to the meaning of what was then Section 135 of the statute, that is the precursor of the present Section 103.

That case was reserved by the Chief Justice because he had directed the jury that they should find a verdict of "not guilty" in respect of certain counts in the indictment charging the accused with obtaining money under false pretences, but that they should find a verdict of "guilty" against the defendant on the counts in the indictment charging him with misbehaviour in office. These were the first three counts in the indictment and, before passing sentence, he reserved the question for the opinion of the Chancery Division of the High Court of Justice, whether the finding upon the first three counts could be sustained in point of law.

The reserved case came on for argument before Chancellor Boyd and Meredith, J., on December 10, 1892, and it was argued that no criminal offence existed, because it was essential that pecuniary damage must result to the public for reason of the irregular conduct of the officer. The Chancellor rejected this argument and apparently proceeded on the theory that, by charging a reasonable price for the service of the dredge, the accused had profited by his own dereliction of duty. The duty of the accused was to audit certain accounts of which he had

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personal cognizance as a government official and to verify their propriety and correctness. In his judgment he dealt with a number of ancient authorities dealing with misbehaviour and misfeasance in public office. He came to the conclusion that the element of profit which had not been excessive, was immaterial, except possibly as an element of mitigation of the accused's conduct. At page 212 in the concluding paragraph he set the matter out as follows:

> "The gravity of the matter is not so much in its merely profitable aspect as in the misuse of power entrusted to the defendant for the public benefit, for the furtherance of personal ends. Public example requires the infliction of punishment when public confidence has thus been abused, and my judgment is, that the conviction should be sustained."

It is clear from the authorities that the accused need not receive a benefit, nor in law need there by any benefit at all. Having said that, any prosecution under this section is made considerably easier if the prosecution can point to some direct or indirect benefit occurring to the accused.

Before leaving I should make reference to R. v. Cyr 45 C.R. (3d) 87 (C.S. Que.), (1987) 9 Q.A.C. 107 (C.A. Que.), to appeal to S.C.C. refused (1988), 89 N.R. 79 (S.C.C.) which considered the elements of an offence under Section 111 (now Section 122) of the Code.

It should be noted that this judgment is in French and what follows is an approximate transaltion. Hannah, J. states as follows:

1. It must be established that the act in breach of trust was committed by an official or someone who would be equally culpable with an official, according to the law, for example by means of Section 21 of the Criminal Code.

2. Breach of trust according to Section 111, implies the use of a public position for the advancement of private ends ("furtherance of personal ends"), it mattering little if the position is occupied as a result of election or appointment by contract or otherwise: Leblanc, supra; Martineau v. R.; R. v. Sheets.

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3. Breach of trust can be committed without the accused having acted dishonestly, in a corrupt fashion, or even having done any illegal act; the crime is rather that which is recognized according to the English terms of the common law by the name "misbehaviour" and "misfeasance in public office". The simple presence of a person in authority that allows a third party to believe that that presence implies that the third party is well advised to follow one course of conduct rather than another, is capable of being considered a breach of trust in certain circumstance: R. v. Bouchard, Que. C.A. No. 10-000256-808, unreported.

4. Breach of trust can be committed by the simple fact duty of to two opposing interests, when one of these interests in question is that of the public. The existence of a double mandate cannot legalize acts or omissions prohibited by the Criminal Code: R. v. Campeau supra.

5. Breach of trust can be committed by an official if he is in contravention of a contract, which contravention will give rise to civil recourse. The violation can be considered criminal and a breach of trust by the simple fact that an official had one acts giving rise to civil recourse: R. v. Lessard supra.

6. Breach of trust can be committed by an official who maintains silence at the moment of approval of something which is capable of bringing him the benefits of advantage to his private ends. A fortiori the official who gives his approval to such matter can equally commit breach of trust: Lessard, supra.

7. Breach of trust can be committed without there being evidence of a benefit, direct or indirect, in favour of the official. It is not necessary that the breach bring a benefit to the official. The use of a power, granted by the public, in order to facilitate private ends is a breach of the public's trust: Leblanc, supra.

8. Breach of trust can be committed by the simple abuse of the position that the official occupies; it is not necessary that the abuse be connected with particular property: R. v. Campbell, supra; R. v. McMorran, supra.

In considering whether or not to grant a motion for "nonsuit" he concluded:

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> "It flows from the proceeding that if there is evidence before the jury:
>
> (1) Of the existence of an official position; and
>
> (2) that the accused official was such at the time stated in the charges, or if the accused is associated with the official according to a provision of criminal law; and
>
> (3) that the acts or omissions of the accused for the furtherance of personal ends ("furtherance of personal ends"), could bring prejudice to the confidence that the public has placed in the position occupied by the accused; the court must not allow the said motion for "nonsuit".

OPINION

In forming any opinion it is necessary to answer two questions for a successful prosecution.

1. What conduct by REID constituted a breach of trust?

2. What benefit did REID either directly or indirectly receive or give which was improper?

REID, was at all material times, Minister of Tourism, and Provincial Secretary, and as such had absolute discretion over the allocation of GO BC funds.

DOONAN was REID's campaign manager during the 1986 election and SULLIVAN was a personal friend of REID and in particular a very close friend of REID's daughter. Both friends of REID were associated with a company by the name of ECO-CLEAN Waste Systems Ltd., a company owned by DOONAN's wife, which had made a proposal to the City of White Rock with respect to a 3 bind multi-material recycling program.

This friendship was known to the WHITE ROCK and SEMIAHMOO officials but was not revealed by REID to his staff.

In granting the money to SEMIAHMOO, REID seems to have ignored many of the guidelines for GO BC funds including:

1. No application was ever submitted by SEMIAHMOO for any multi-material recycling.

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2. No financial plan was provided.
3. SEMIAHMOO had not received a contract from WHITE ROCK and therefore not assured of funding for operation costs.
4. Funds were to be paid 50% when equipment was ordered with the remaining 50% when the equipment was received.
5. 100% of the costs of the project were approved.

In addition there would appear to be irregularities with respect to:

1. 100% funding of the computer program for SEMIAHMOO.
2. Confusion at least with respect to the presentation of the cheques at the WHITE ROCK Council meeting.
3. The timing of the purchase order from SEMIAHMOO at ECO-CLEAN and subsequent transfer of all the money.
4. Personal notes of REID granting the $277,065.00 to SEMIAHMOO in the absence of an application.

There is no evidence of any benefit directed to REID. It may be inferred that REID was conferring a benefit to his close friends DOONAN and SULLIVAN, but it may also be inferred the real benefit was to the residents of White Rock and the surrounding area as argued by REID, DOONAN and SULLIVAN.

REID's behaviour may be characterized as irregular and imprudent but I am unable to discern any real evidence of what I categorize as dishonesty with an intention to obtain or give personal benefit. As previously mentioned it is my view that a charge may be made out without any direct or indirect benefit accruing to the accused. The absence of any evidence of benefit however, in my view, a fact which mitigates against a criminal prosecution.

I have carefully searched the transcripts of the inquiry for any hint of suggestion of criminal breach of trust and I can find none. REID's actions may be categorized as politically inspired "pork-barrelling" but it is my opinion that a criminal breach of trust requires something more overt to be present.

Public officials must continually make decisions regarding the funding, or non-funding, of projects. If the funding happens to go to a friend of the official that is a good reason for extra

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caution to be exercised. That caution is missing in this case. But it cannot be said that REID intentionally defrauded or breached the public trust in his dealings with these two grants.

In reaching my opinion on this case I have extensively reviewed the transcripts of the Comptroller General's Inquiry. Although the statements made by REID at this inquiry cannot from evidence on any subsequent legal proceeding pursuant to Section 13 of the Canadian Charter of Rights and Freedoms they do provide an interesting answer to the "other side of the story".

The heart and soul of the concern of a breach of trust in this case is the appearance that REID attempted to gain improper benefits for his friends and attempted to "launder" these benefits through SEMIAHMOO. It is this appearance of attempted subterfuge that makes REID's actions suspicious.

REID was asked questions at the Comptroller General's Inquiry, held in Vancouver, October 30, 1989, about the issue of his non-disclosure of his relationship between DOONAN and SULLIVAN and the allocation of the grant money:

> Q. Okay. Well, let me ask you this, the ultimate recipient of the fair bit of this grant money was going to be a company owned and controlled by your former Campaign Manager from 1986 and a close personal friend of yourself and your daughter's. Did you not think that perhaps with this application the rules and procedures should be followed?
>
> A. The rules and procedures were followed.
>
> Q. There was no application form --
>
> A. Yes.
>
> Q. -- from the Society?
>
> A. Well, the rules didn't require an application form for every Go application funding. They did not require that.
>
> Q. Did you think it was prudent to give a quarter of a million dollars worth of taxpayers' money out in this situation without a written application even if the rules didn't require one?

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A. The prudency was the participants that were apart of the overall project. The prudency, in my mind, was that there were such numbers of people, support people, interested people, concerned people in the community involved with the overall project that, yes, it warranted a ministerial approval to proceed. Now, if you ask me today, Mr. Henderson, if I question the consideration of any free enterprise person in my constituency to access funds from a particular project, the answer is, "Yes." And did I --did I have some concerns about Mr. Doonan and Mr. Sullivan having some participation with the City of White Rock and with the Community Pride, yes, I had some concerns, but in my own mind I weighted the entrepreneur, knowledgeable people, the best in the business that had come forward with a project and with some initiative. I agreed in my own mind. I agreed that since they happened to be -- I didn't want to preclude them because they happened to be friends and associates.

Q. Actually, my question didn't even go that far. I'm not suggesting that you should necessarily have precluded them. Others might. I'm suggesting that you have erred on the side of caution following the rules, following the guidelines, making sure that the project was viable and had the support of the various community groups before you went ahead. Did you not --

A. I did that.

Q. --feel that that would be wise in this case, of all cases?

A. But I did that in my own mind.

Q. Did you disclose to any of the other players the connection, the close connection you had with Doonan and Sullivan?

A. No.

Q. Did you ever tell the Mayor that?

A. He knew. Look, the Mayor knows Mr. Doonan's involvement with -- with my constituency since --

Q. I'm not suggesting in my questions that he doesn't but what about Mr. Sullivan, did you disclose the relationship with Mr. Sullivan to the Mayor?

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A. Mr. Sullivan is no more an associate or friend of my than a thousand others in White Rock. Why would I -- why would I do that?

Q. Mr. Sullivan has been having a close personal relationship with your daughter since 1983; isn't that correct?

A. But my daughter hasn't lived at home since before that.

Q. And Mr. Sullivan has been approximately weekly or perhaps biweekly over to your house for dinner and social occasions --

A. Yes.

Q. -- has he not?

A. Yes.

Q. Well, is he not a fairly close personal friend in those circumstances?

A. Yes.

Q. Did it not occur to you that some of these facts should be disclosed to others before this matter was fully agreed upon and decided?

A. It was my -- it was my -- it would have been my understanding that all the participants knew each other, knew who they were, knew their friendships and relationships.

Q. Alanna Hendren knew that?

A. No, not that I know of. She -- she knew of my relationship with George Doonan, because she's a member of the Party. She's a Social Credit member.

Q. Yes, she is.

A. So, I mean I never -- I never raised it, because that's not the reason for my recognizing the two participants. It was because of their expertise. I mean if you preclude their expertise --

Q. But some people might not perceive it that way, and --

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A. That's why we're here today.

Q. Isn't that a troubling situation?

A. That's why we're here today is because there are people who have perceived there was something sinister about that, and -- and I'm trying to explain to you that hindsight -- look in hindsight timing -- the reasons for all this is -- I mean Mr. Doonan and Mr. Sullivan were a part of the announcement on June 26th. This question -- and they were introduced to the chamber. They were introduced to everybody that was a participant, and they all knew -- everybody in the Council chamber knows George Doonan is my -- was my Campaign Manger in '86, and for me to introduce him in Council chamber as a participant in ECO-Clean was no big surprise to them who George Doonan was. I didn't probably have name the gentlemen, but I wasn't -- there was no secret. There was no secret that he was being introduced as a participant in the programme, but three months later there was some concern about who George Doonan was in relation to Bill Reid.

Q. Did you ever think of leaving the decision on whether to give this grant, and to whom, to your Deputy Minister or to someone else?

A. No.

Q. You see, what I'm really getting at here, sir, is the perception of a conflict of interest. Some might think that you were caught in a conflict-of-interest situation because of your closeness with the ECO-Clean Company, which would ultimately benefit from this government largess. Did you think about it in those terms?

A. Yeah, I thought of the perception, but -- and I considered that, but since all of the applications for Go B.C., every Lottery Fund application in the Province of British Columbia had to be authorized by myself, and since I had the knowledge of the overall project --

Q. You can delegate that to your Deputy, could you not? There seem to be virtually no rules about --

A. I could have. I could have. If I --

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Q. There's nothing in the Lottery Act that precluded that delegation?

A. No, but I didn't perceive any problem. If you asked me today, in hindsight, I can go back and say to you, "Yes." In hindsight, if there's anything that a politician shouldn't do, it shouldn't have any associates or friends in government. And if you ask me today would I do it this way again, the absolute answer, as you would probably anticipate, is, "No way. No way, because of the perception that's been drawn on it." But if you ask me the expertise of the people, the answer is, "They still have -- they are the most expert in it. They are the ones making proposals." But in -- in explanation of it, the perception is why I'm here.

In essence REID has stated, under oath, that in hindsight he made a mistake because of the perception that he was improperly directing GO BC grant money to his friends. REID has emphatically stated that he had no intention doing any such thing but rather his sole concern was to fast track the recycling grant and have the first pilot project in British Columbia commence in his constituency. Such an explanation, in my opinion, would give rise to a reasonable doubt on the guilt of REID in a criminal forum.

The operation of ECO-Clean and the granting of the application to SEMIAHMOO are prima facie lawful activities. This fact underscores the necessity of having evidence sufficiently powerful to compel rather than simply allow the drawing of inferences consistent only with guilt. It must be remembered that REID must be considered to be an honest policitian acting in good faith and that DOONAN and SULLIVAN must be considered to be honest businessmen acting in good faith, unless proved otherwise.

The definitions of "breach of trust" suggested by the historical analysis of the law relating to Section 122 of the Criminal Code is, in my view, unduly theoretical. If parliament has chosen to make policitical patronage a criminal offence they could have done so in clear and concise language.

I do not accept the possiblity that Section 122 of the Criminal Code does not require the Crown to prove the issue of mens rea beyond a reasonable doubt. In my judgment REID must have intended to breach the public trust in the one of the manners set forth in the cases stated. If, for example SULLIVAN and DOONAN were clearly incapable or incompetent of performing the duties required of them as a supplier to SEMIAHMOO then that would give rise to cogent

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evidence suggesting a breach of trust. There is no evidence, however, to suggest that SULLIVAN and DOONAN could not have produced what was asked of them. Similarly, the secrecy with which it is alleged that REID operated must be counter-balanced by the evidence that officials of WHITE ROCK knew of his relationship with SULLIVAN and DOONAN. REID, in his testimony before the inquiry, says that he did not mention his relationship with SULLIVAN and DOONAN because the parties knew about it already. This is capable, in my view, of raising a reasonable doubt on the issue of secrecy. A jury, on this evidence, would be forced to speculate and guess about the reasons for REID's irregular action.

In short it may be that without reference to the transcripts of the Inquiry a prima facie case of breach of trust has been made out herein. However the statements of the witnesses under oath clearly tells "another side of the story" which is capable of being believed and accordingly the Crown falls short of its responsiblity to prove beyond a reasonable doubt, that REID committed and intended to commit a breach of trust.

Accordingly it is my opinion that there is not a substantial likelihood of conviction of REID, DOONAN or SULLIVAN herein and that the standard quality control charge approving standards are not met in this case.

Finally, I confirm with you our previous conversation wherein I confirmed that I have had dealings with REID during my tenure as Chairman of Sport B.C. This interaction between REID and myself was during his capacity as the Minister of Tourism and Provincial Secretary and was purely professional in nature. While I have no personal relationship with REID I confirm that a second independent legal opinion is appropriate herein to ensure that the public understands that a fair, unbiased examination of these issues has occurred.

I would be pleased to discuss this matter with you should you require.

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

PROSECUTE INQUIRY
EXHIBIT # 11
DATE: May 4, 1990
KRH

ROBERTSON, PECK, THOMPSON

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Reply to: Richard C.C. Peck

January 18, 1990.

PERSONAL & CONFIDENTIAL

DELIVERED BY COURIER

Mr. Robert H. Wright, Q.C.,
Regional Crown Counsel,
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Dear Sir:

Re: Regina v. REID, DOONAN and SULLIVAN

By letter dated January 8th, 1990, you have asked me to render an opinion as to whether William Earl Reid, George Barry Doonan and Richard William Sullivan should be charged with a criminal offence arising out of the circumstances surrounding the granting of public funds under the Growth and Opportunities British Columbia ("GO B.C.") program in the late spring and early summer of 1989.

In preparing my opinion I have reviewed in detail the materials that you provided, including the thorough report prepared by Inspector MacAulay of the Commercial Crime Section of the R.C.M.P. and the six volumes of transcripts of the Comptroller General's Inquiry which was conducted in October and November of 1989. I have also read the Comptroller General's Special Report dated December 12th, 1989, and have reviewed the relevant case law. Finally, I have held discussions with yourself and Ace Henderson where I felt that matters needed further explanation.

As I develop this opinion it will be apparent to you that I am focusing my attention on William Earl Reid (I will refer to him as "Reid" henceforth, and once I have identified other persons in this opinion will subsequently only refer to them by their last names). I have focused on Reid for reasons that will quickly become apparent. In this regard I can state at the outset that I do not believe a charge of fraud under Section 380 of the *Criminal Code* is sustainable on the facts as I understand them. If the conduct of the parties is caught by any *Criminal Code* section, it is Section 122 "Breach of Trust by Public Officer". Early on in my review I concluded that there was not a substantial likelihood of conviction of any of the parties for fraud, which was one of the two potential charges that Inspector MacAulay had identified. The other section identified for a potential charge was Section 122. I also considered Section 336 "Criminal Breach of Trust" but as that section requires proof of fraud I have discounted it as well.

For the purposes of this opinion I will commence with a discussion of the law surrounding Section 122 of the *Criminal Code*. In due course I will make reference to the facts but do so on the understanding that you are well versed in them.

Before commencing with a discussion of the law as it pertains to Section 122 of the *Code*, I wish to make reference to the conduct of Reid that gives rise to this consideration. At the relevant time Reid was Minister of Tourism and Provincial Secretary. It is the propriety of his conduct in making certain grants of government money that has given rise to the investigation. Specifically, it is his conduct in making a grant to the Semiahmoo House Society on June 26th, 1989, under the "GO B.C." grant program that is in question. I will return to the facts later.

Section 122 of the *Criminal Code* is somewhat anomalous. It is a section of the *Code* whose existence and legal interpretation stems from the proposition that government officials, imbued as they are with the public trust, must conduct themselves in a manner befitting the position. Section 122 reads as follows:

> Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Numerous definitions of the word "trust" and the phrase "breach of trust" are available. For instance, Black's Law Dictionary defines "trust" as "a confidence reposed in one person for the benefit of another" and as "an obligation on a person arising out of confidence reposed in him to apply property faithfully and according to such confidence."

Black's defines breach of trust as "an act done by a trustee contrary to the terms of his trust" and "every violation by a trustee of a duty which equity lays upon him, whether wilful or fraudulent, or done through negligence, or arising through mere oversight and forgetfulness". One might be surprised to see that a breach of trust can arise from mere negligence and one might be ready to conclude that such would only have application in civil law, but the history of the offence contained in Section 122 yields the opposite result. A useful analysis of the law in this regard is contained in the case of *R. v. Campbell* (1967) 3 C.C.C. 250, a decision of the Ontario Court of Appeal. In that Judgment reference is made to the case of *The King v. Bembridge*, a 1783 decision of Lord Mansfield found at 99 E.R. 679. In *Bembridge* Lord Mansfield referred to precedent for an indictment against the *custos brevium* for losing a record. For the uninitiated, the *custos brevium* is defined in Black's Law Dictionary as "the keeper of the Writs. A principal clerk belonging to the courts of Queen's Bench and common pleas whose office it was to keep the Writs returnable into those courts."

Although there is a paucity of Canadian case law respecting Section 122 and its predecessors, a number of matters are clear. The first is that evidence of dishonesty or corruption is not required for a conviction under the section. Moreover, there is no requirement that the illegal act be concealed or that there be evidence of a monetary prejudice to the government. [See *R. v. Hebert* (1986) R.J.Q. 236 Quebec C.A.] These matters may seem unusual at first but when one analyzes the nature and import of the section things fall into place. Acts of public officials may, by their very nature, give rise to a loss of public confidence without overt dishonesty. The acts may be blatant as opposed to concealed, yet still impugn the public trust. Monetary loss may or may not be incidental to the conduct yet the loss of public confidence may be the order of the day if the acts fall outside the standards of propriety required of one in public office.

I have set out what the case law considers to be unnecessary in the proof of the offence. I will now set out what is necessary to prove the offence. A succinct statement is contained in the Canadian Abridgement, Second Edition, Fifth Permanent Supplement, 1986, Volume 3, Page 12:

> A breach of trust offence implies the use of a public office by an official for his or her own personal ends. The conduct need not be corrupt. His or her mere presence may be sufficient. There is no need for the official to benefit directly or indirectly for the offence to be committed.

This quotation is based on an analysis of the case of *Regina v. Cyr* which was tried in Superior Court in Quebec with the accused--appellant unsuccessfully appealing his conviction to the Quebec Court of Appeal. A summary of the case is as follows:

> The accused was hired by a government agency as a coordinator of construction projects. He was found guilty on two counts of breach of trust by a public officer namely for obtaining a subcontracting job for his son through a company and obtaining construction equipment valued at $3,600.00. Even though the accused did not derive any material benefit he made improper use of his public office.

The Court of Appeal Judgment is found at 1987 9 Q.A.C. 107, with leave to appeal to the Supreme Court of Canada being refused [1988/89 N.R. 79]. It is interesting to note that the acts of Cyr in the French version are referred to as "les actes d'abus de confiance." In other words, the French version uses the word "confiance" (confidence) as opposed to the word "trust". Although the words are perhaps interchangeable, it seems to me that because of the historical importance and special powers and privileges attached to a public position the section is intended to be given a broad interpretation. I would not go so far as to suggest that acts of mere negligence would suffice to form the basis of a prosecution under Section 122, but it is clear that the section is intended to catch conduct which falls short of proof of fraud or dishonesty. I conclude that this is so in part because of the wording of the section (the word "fraud" and the phrase "breach of trust" are set out in the disjunctive) and in part because the *Criminal Code* contains in Section 336 the offence of "criminal breach of trust" which does require proof of fraud. I am fortified in my view as well by the case law, including the case of *Regina v. Fraser* (1983) N.W.T.R. 280, where at Page 281 the following excerpt appears:

> ...the offence was a breach of public confidence; and in my view s.111 (now s.122) of the Code should be given very wide interpretation.

I also refer to the words of Lord Mansfield in the case of *The King v. Bembridge* (*supra*) where he states:

> Secondly where there is a breach of trust, fraud, or imposition, in a matter concerning the public, though as between individuals it would only be actionable, yet as between the King and the subject it is indictable. That such should be the rule is essential to the existence of the country.
>
> (underlining supplied by the writer)

The offence contained in Section 122, then, is one involving a misuse of power entrusted to the official for the advancement of his own personal ends. There need not be any monetary benefit or gain, although the evidence must be capable of demonstrating directly or by inference that the conduct of the accused was aimed at advancing his personal ends. The conduct, in my opinion, must be something more than mere negligence but does not have to amount to fraud. Having said this, I adopt the Law Reform Commission's view that the criminal law's prime function is to articulate, underline and thereby bolster basic social values. "As a blunt instrument of last resort, criminal law should be used with restraint." [Report No. 12, Theft and Fraud (1979) Page 5.] This leads me to the conclusion that the type of conduct properly the subject of a criminal charge under Section 122 of the *Code* is conduct falling well outside the bounds of official propriety. In other words, conduct which requires the imposition of criminal law sanctions. In deciding whether Reid's conduct is of this magnitude, a review of the facts is necessary.

A simple statement of the facts in this case is not sufficient for these purposes. Accordingly, as I set out the facts as derived from the inquiry of the Comptroller General, I will from time to time insert my own comments and contrast the evidence of one witness with another. Where necessary I will make reference to that portion of the transcript where the evidence can be found.

Responsibility for the "GO B.C." program was under the jurisdiction of the Provincial Secretary, Reid, at the relevant time. He was responsible for the program and gave final approval to grants. He exercised a broad discretion. General guidelines were in place but were subject to flexibility. Applications for grants would come to Reid for his review and then be forwarded to his staff for assessment, although Reid would have the final say.

In March of 1989 the City of White Rock prepared and forwarded to Reid an application for a "GO B.C." grant for recycling. During the same month Reid met the mayor of White Rock, Gordon Hogg, to discuss the application. White Rock's application designated the Surrey Food Bank as the organization which would carry out the recycling program. Reid preferred the Semiahmoo House Society, which had been doing ongoing work for White Rock. This society is aimed at assisting the mentally handicapped and Reid was a supporter of it. White Rock's application was subsequently revised to substitute the Semiahmoo House Society for the Surrey Food Bank.

Prior to White Rock's initial application, George Doonan and William Sullivan had banded together to promote a concept of recycling based on the use of three stackable bins. Their hope was that if funding could be obtained this could become a model project for the Province. Doonan was Reid's campaign manager in the 1986 Provincial election and Sullivan had a long-term relationship with one of Reid's daughters. Although Reid tended to down-play his relationship with Doonan and Sullivan in the course of his testimony, it is clear from the evidence that he had close personal ties with both of them. Doonan is an automotive machinist by trade and had over the years been variously involved in a truck service business and a garbage collection company. His relationship with Reid stemmed back to 1983 and at the time of the inquiry in October of 1989, he was the past Vice-President of Reid's constituency association in White Rock and a current member of the executive.

Sullivan characterizes himself as an entrepreneur with training as a city planner and prior involvement in real estate development. He has known the Reid family for 20 years and worked on Reid's campaign in 1986. His relationship with Gail Reid has extended over a considerable number of years, during which time they lived together on an off-and-on basis. The most recent period of cohabitation ended in June of 1989. At the time of the inquiry they were still dating. Sullivan owns a summer house at Birch Bay, which is in close proximity to a summer house owned by the Reid family. Over the years Sullivan has been a frequent dinner guest at the Reid household.

I mentioned that Reid attempted to down-play his relationships with Doonan and Sullivan. One specific example may be found at Page 899, Volume 5 of the transcript:

> A: Mr. Sullivan is no more an associate or friend of mine than a thousand others in White Rock.

Doonan and Sullivan needed funding for their model project. In order to put the project into operation they needed to fabricate the stackable plastic bins and thus had to have a mold prepared. This was a costly venture. On March 12th, 1989, Reid met with Doonan and Sullivan to discuss the possibility of their entering the recycling business. In due course Reid asked his Ministerial Assistant, Hans Schinz, to introduce Doonan and Sullivan to Peter Laipnieks, a Director of Purchasing with the Purchasing Commission. The meeting took place on May 25th, 1989, at a restaurant in Delta. Doonan and Sullivan were looking for funding to manufacture the restackable bins. Laipnieks apparently found the concept interesting but required Doonan and Sullivan to substantiate their concept by a proposal. The proposal never came. Laipnieks did enquire as to what amount of money Doonan and Sullivan had spent on the project and they indicated $30,000.00. That, in the mind of Laipnieks, gave them some credibility. (See Transcript, Volume 4, Page 637.) In fact, Doonan and Sullivan had invested next to nothing in the concept. Their statement that they had spent $30,000.00 was nothing more than a monetary figure applied to their estimate of time. Laipnieks felt that Doonan and Sullivan's statement that they had spent $30,000.00 on the project gave them some credibility. He did not ask them to substantiate it at the time but rather to substantiate the whole thing in a written proposal.

Laipnieks was careful to advise Doonan and Sullivan that not only would he require a proposal from them but he would also require an order from a municipality for the goods. Laipnieks was emphatic that he made no commitment to Doonan and Sullivan respecting any funds available from the Purchasing Commission for their concept. Laipnieks retained notes of the meeting which indicated that Doonan agreed to forward a written proposal. He never did receive such a proposal from them. Laipnieks also indicated to Doonan and Sullivan that the Purchasing Commission could not accept their bin as a provincial standard as this was a matter within the jurisdiction of the municipalities.

Laipnieks had a further meeting with Doonan and Sullivan on July 13th, 1989. He had found them extremely difficult to contact but was able to meet with them on this date. They indicated to him that matters were progressing and they had obtained one order for their bins. Laipnieks had still not received any written proposal although subsequently in late July certain specifications which had presumably been supplied by Doonan and Sullivan to Reid were forwarded to the C.E.O. of the Purchasing Commission. These specifications were forwarded to Laipnieks. Laipnieks' response to this is included in his testimony at Page 648, Volume 4:

> I'm talking with these guys and they elect to go through our Minister to give the document and this didn't constitute anything close to a proposal in my eyes so I didn't--didn't even warrant a response.

Laipnieks had a further discussion with Sullivan which would have taken place in September of 1989. During this conversation Laipnieks was advised that Doonan and Sullivan had not bid on a City of Vancouver tender for recycling boxes. When he asked Sullivan why they had not put in a bid, he was told that they weren't prepared.

Laipnieks was left with a somewhat poor impression of Doonan and Sullivan. At Page 670, Volume 4, he states as follows:

> They struck me as 'good old boys', leisure crowd, and that we were trying to work on an idea that, you know--you know, if we bought or bought the concept that, you know, something could be--could be done. That's--I mean they took a very, very casual approach, the fact that the company was run out of their house, and we met in restaurants and they never wore suits. They brought their daughter to the restaurant--to the meetings.

It is apparent that Doonan and Sullivan were actively involved with Reid in attempting to promote their concept. They met on April 15th, 1989, at Reid's White Rock office and as a result of this, Reid was able to arrange a meeting at his office in the Parliament Buildings on May 18th, 1989, involving Doonan and Sullivan and a number of government officials. That meeting, in turn, resulted in the meeting with Laipnieks, which has already been referred to.

It is apparent that Doonan had a very definite view of the import of these various meetings, although his misperception may in part have been fostered by Reid. Doonan's understanding of the Victoria meeting with government officials on May 18th, 1989, was that a pilot project could be funded by "GO B.C." to the tune of 100%. Doonan states that this was mentioned to him by Reid. (See Volume 2, Page 303.) Doonan's conclusion as to what had been said by Laipnieks was that money would be forthcoming from the Purchasing Commission. Doonan felt that he had been assured by Laipnieks that if he (Doonan) could provide a customer the Purchasing Commission would provide the funding. (See Volume 2, Pages 320-321.) During the course of his examination a number of questions were put to Doonan as to whether he was prepared to go to public tender with respect to his project. He was emphatic in stating that he was not, that it was his project and he wished to be paid for it. (See Volume 2, Page 322.)

By mid May, 1989, Doonan and Sullivan were operating out of a company known as Eco-Clean Waste Systems Ltd. On June 2nd, 1989, Doonan and Sullivan met with Gordon Hogg, the Mayor of White Rock, and other White Rock officials, to present their concept. Later they made a presentation to the White Rock City Council and on June 23rd, 1989, at the insistence of Sullivan, Hogg sent a letter to Reid indicating that White Rock was impressed with Doonan and Sullivan's (Eco-Clean's) proposal. This letter reads in part as follows:

> The Committee was most impressed with this system and agreed that the initial request for "GO B.C." funds for the City of White Rock's multi material recycling project be revised to reflect the advantages such a system will afford to our residents.
>
> (See Hogg Transcript, Volume 3, Pages 448-449.)

This letter had been drafted after a telephone call between Sullivan and Hogg. Sullivan told Hogg that Reid required a statement with respect to the City's interest in the three-bin (Eco-Clean) system. Hogg was careful to advise Sullivan that White Rock had not made that decision, although they were favourably impressed and would send a letter to this effect. Notwithstanding this, Hogg was of the view that if they received the "GO B.C." funding for the recycling project the matter would still be put out to public tender. At Page 452 Hogg states as follows:

> ...and that we had a report from the engineers suggesting that we call for proposals from at least four different groups before entering into a recycling program, and it was in my mind that that would be the process we would follow, is calling further proposals or tendering from the groups who had expressed interest...

To put matters out to tender would be consistent with the practice of the Corporation of White Rock. Hogg believed that Sullivan was well aware of this and that it had been discussed at the White Rock Committee of the Whole meeting that Sullivan and Doonan had attended. (See Hogg Transcript, Volume 3, Pages 452-453.)

Hogg is emphatic that he made it clear to Sullivan that White Rock was not committed to hiring Eco-Clean. He reviewed the minutes of the Committee of the Whole meeting to confirm that recollection. (Hogg Transcript, Volume 3, Page 456.) Nevertheless, Hogg was under the impression after his telephone discussion with Sullivan that the provision of the letter of June 23rd would enhance the probability of White Rock receiving a grant for its recycling concept. (See Hogg Transcript, Volume 3, Pages 457-458.)

A digression at this point is appropriate. Doonan and Sullivan had made enquiries during the early part of 1989 as to the cost and feasibility of manufacturing a mold to produce the bins which they envisioned for their concept. Although they eventually received significant funds (as will shortly be referred to) they never did accomplish this task. By the time the case broke in September, 1989, they had still not acquired a mold nor taken significant steps to put their concept into practice.

In March of 1989 the Semiahmoo House Society, under its Executive Director, Alanna Hendren, had met with Reid and Hogg to discuss paper recycling in White Rock. Semiahmoo was doing that work for White Rock at the time but consideration was being given to the funding of a paper recycling truck. In the same month Semiahmoo and White Rock had discussions concerning multi-material recycling. In April, 1989, Reid and Schinz met with Hendren and Reid outlined his interest in a recycling program for White Rock that could involve Semiahmoo. Semiahmoo and White Rock at this time were involved in negotiations that had reached a stalemate. Reid told Hendren:

> I'm so excited about doing something environmentally sound, that if the City of White Rock and you cannot reach some sort of agreement, I would be willing to throw some money in.
> (Hendren Transcript, Volume 1, Page 143)

In the month of June Hendren received a phone call from Schinz. He advised her that Reid was involved in discussions with White Rock regarding a recycling program and on June 23rd, 1989, in yet a further telephone conversation with Schinz, Hendren advised that Semiahmoo had prepared a short proposal and had obtained an estimate for the purchase of a truck. Schinz advised Hendren that Reid was negotiating ownership of the program with White Rock and was also investigating truck prices. Later that afternoon Schinz dropped by Hendren's office and picked up the Semiahmoo preliminary proposal and truck estimate. (See Hendren Transcript, Volume 1, Pages 148-149.)

At no time prior to June 26th, 1989, did Semiahmoo submit an application for "GO B.C." funding for a recycling program in the White Rock area. Semiahmoo had, however, submitted an application for funding the purchase of a computer. This application had been submitted on June 7th, 1989, with the total cost of the project being $23,112.00, of which $7,700.00 was sought from "GO B.C."

Peter Martin, Executive Director of Public Programs with the Ministry of Tourism and Provincial Secretary, testified at the inquiry. Among other things he testified that for "GO B.C." to fund 100% of a project cost was a rare occurrence. (See Martin Transcript, Volume 1, Pages 214-215.) He also said that the occasions where "GO B.C." monies were advanced without any application form having been completed were also rare. He acknowledged that the file containing White Rock's application for a recycling grant bore the notation "Deemed Withdrawn". This was in the writing of Lisa Markham and was done under his (Martin's) direction. Martin had received a fax transmission from Reid's office in the form of notes in Reid's hand indicating that Semiahmoo House Society had ownership or leadership in the recycling project and that the award for the project would be to Semiahmoo House. Martin believed that Reid was cooperating closely with all the parties and that there had been an informal transfer of "ownership". Martin had instructions that Reid wished to take a completed package with him on the afternoon of June 26th, 1989, which would include a large mock-up of a cheque in the amount of the funding to be awarded. These mock-up cheques provided an opportunity for photo publicity for the government officials involved. Martin acknowledged that normally much more information would have been at hand at the time the grant was prepared and that he did not have enough financial data to make the grant according to usual practices. It is also important to note that Martin was unaware that included in the $277,000.00 of grant funding was $50,000.00 for research and development designated for the acquisition of a mold to manufacture recycling bins. To fund the acquisition of a capital asset in that respect would have been contrary to "GO B.C." policy and practice.

Markham was instructed by Martin to close the White Rock file and open a new one under the name of Semiahmoo House. She assumed that the City of White Rock had given assent to this being done. Markham and Martin reviewed the Minister's handwritten notes and from them drafted up the funding grant. They did this despite the lack of any verification of the figures contained in Reid's notes:

> Q: Ok. Now, when you say you looked at the figures, did you do any verification of those figures? We mentioned earlier that you look at certain figures to see their reasonableness?
>
> A: None whatsoever in this case, because to me, as a staff person, it was a fait accompli. It was, 'Do this. The Minister wants this.' In a situation like that when I had no reason to suspect that there would be anything wrong with the figures, I accepted them completely.
>
> (Markham Transcript, Volume 4, Page 592)

In drafting up the documents the name Eco-Clean Waste Systems was crossed out as neither Martin nor Markham were familiar with this entity and they were attempting to put together a press release.

In proceeding in the manner that she did, Markham stated:

> I just felt it was Mr. Reid's riding, and he must have had some kind of understanding between the Municipal Council and the Society that this would be a better way to go. My assumption was that all parties agreed.
>
> (Markham Transcript, Volume 4, Page 599)

Markham's attention was directed to a letter from Eco-Clean Waste Systems dated June 5th, 1989, referring to $100,000.00 for research and development costs. She, like Martin, had never seen this letter before and it had clearly been placed on file after June 26th, 1989.

At the same time "GO B.C." staff drew up the grant to Semiahmoo in the amount of $277,000.00, it also drew up a grant to Semiahmoo for the full cost of their computer.

On June 26th, 1989, Hendren had taken the day off and was at her aerobics class when her husband arrived and advised her that she had to be at a meeting at City Hall at 8:00 p.m. Her husband had apparently received a call from Reid's office to this effect. She went home, got cleaned up and went to City Hall. While waiting to go into Council Chambers Reid and Schinz arrived and Reid introduced her at this time to Doonan and Sullivan. Reid presented her with a "GO B.C." press release advising that the sum of $277,065.00 had been awarded to Semiahmoo House. Reid advised her that Doonan and Sullivan had researched the project, that Doonan was a specialist in the area of trucks and that they would be providing the materials to Semiahmoo House. According to Reid, Semiahmoo's role would be to purchase the materials and provide the recycling service. Reid also advised her that an award of $23,000.00 was being granted from "GO B.C." funds for the computer. When Hendren said to Reid that Semiahmoo had not applied for the bins, he advised her that it was more expedient to give Semiahmoo the money and that it was going to be a Peninsula program, not just a White Rock program. (See Hendren Transcript, Volume 1, Page 163.) Reid also told her that Doonan and Sullivan would be at her office the next day to obtain a purchase order. Reid denied having said this. (See Reid Transcript, Volume 1, Page 96.) Thereafter the parties went into Council Chambers and Reid made the announcements.

As to what Reid said in Council Chambers is the subject of much debate. Those involved with the City of White Rock, including Hogg, believed that their grant application had been successful. (See Hogg Transcript, Volume 3, Pages 458-460.) Indeed, it wasn't until White Rock received a letter dated July 20th, 1989, from Semiahmoo House that they were aware that Semiahmoo had been awarded the funds. (See Hogg Transcript, Volume 3, Page 465.)

The large mock-up cheque that had been prepared by the "GO B.C." staff for publicity purposes was not produced by Reid at the Council meeting, notwithstanding the presence of the media. Rather, Reid presented the cheque to Hendren on the street outside White Rock Municipal Hall after the meeting. Reid told Hendren she could keep the cheque as a souvenir. Although these cheques were used for photo opportunities, Schinz stated that he had advised Reid that it was not appropriate to present the large cheque to Semiahmoo at the Council meeting because the project encompassed all of the Semiahmoo Peninsula and not just the City of White Rock. Hendren denied Reid's assertion that he had told her to keep the cheque because there would be a publicity event with the media some days hence. Reid's explanation for presenting the cheque to Hendren in this manner is contained at Pages 90-91 at Volume 1:

> I intended that Alanna Hendren make--that the presentation of the cheque to Semiahmoo House Society be handled by the media at another event, which would have, which would have been a few days later, I presented her with a cheque so that she would have it in her possession when, in fact, that media opportunity presented itself.

Neither Reid nor Schinz give compelling evidence as to why the mock-up cheque was given to Hendren on the street after the Council Chambers meeting. Their evidence leaves much to be desired in this regard. The evidence of Schinz leaves much to be desired overall. It has a certain evasive quality about it.

On June 27th, 1989, Doonan and Sullivan attended the offices of Semiahmoo and directed the details for a purchase order from Semiahmoo to Eco-Clean. When Hendren asked what the containers cost, Sullivan stated:

> Well here's the deal, the containers are $6.00 apiece but there's $50,000.00 research and development written in.
>
> (See Hendren Transcript, Volume 1, Page 175)

Prior to the Council meeting the night before Reid had told Hendren that 50% of the funds were to be paid once the purchase order had been given and 50% upon delivery and that he wanted the matter fast tracked. Hendren testified that the Society would normally get estimates for purchases but that wasn't done in this case because the Society was "...under the impression that the Minister's office had researched this entirely and this was the company that was the best prepared to provide the equipment." She had also been told on June 26th, 1989, that "...this was the only company capable of producing these items in British Columbia." (See Hendren Transcript, Volume 1, Page 177.)

On July 5th, 1989, Hendren received a phone call from Schinz advising that a cheque for 50% of the $277,000.00 was available. Within 10 to 30 minutes of having received Schinz' phone call Hendren received a call from Sullivan stating:

> Oh I hear that you've got the cheque. Phone me when the cheque--when your cheque to Eco-Clean is prepared and I'll come in and pick it up.

Early on the afternoon of June 27th, 1989, Sullivan attended the Semiahmoo office and picked up a cheque in the amount of $138,000.00.

Schinz denied that either he or Reid contacted Sullivan or Doonan to advise them that the cheque was ready. (See Schinz Transcript, Volume 3, Page 547.) Reid made a similar denial. (See Reid Transcript, Volume 5, Page 889.) Sullivan testified that the timeliness of his phone call concerning the cheque was really a matter of coincidence. He denied that Schinz had informed him that the cheque was ready. (Sullivan Transcript, Volume 2, Page 419.)

I have mentioned that by late July, 1989, the City of White Rock had become aware that the grant monies had been awarded to Semiahmoo. Hogg instructed the City Engineer to follow this matter up with Semiahmoo to find out what had taken place and how they had received the money as opposed to White Rock. By early September, 1989, matters were coming into focus and White Rock Council began to consider whether it desired to continue with the project. There were a number of problems, including the concept of the three-bin system. In the meantime, Semiahmoo realized that it was involved in a project which presented considerable difficulties for it, not the least of which was the Society's ability to handle the project. By September 19th, 1989, the Society's Board decided not to be involved in the project any further and to write to Reid advising of this. On September 30th, 1989, the Society wrote a letter to Reid informing him of the Society's withdrawal from the recycling program. In the meantime, the Vancouver "Sun" published a story respecting the circumstances surrounding the grant.

When the media began investigating the matter Hendren had a telephone conversation with Schinz. She had contacted Schinz by telephone to obtain his advice on how to deal with the matter. Schinz said to her:

> Well just tell them the truth. Tell them that Eco-Clean came and made a presentation to you and based on the merits of that presentation you decided to go with them.

Hendren did not tell the media that because it was not the truth and Eco-Clean had not made a presentation to her. (See Hendren Transcript, Volume 1, Page 196.) Schinz, for his part, has no recollection of such a conversation. The following extract is taken from his testimony.

> Q: Did you tell her to tell anyone that Eco-Clean had made a presentation?
>
> A: I don't recall. It might have been, if it was true if they made a presentation to her.
>
> Q: Let's deal with that. Had they?
>
> A: I don't know.
>
> Q: Did you tell her to say that they had made a presentation?
>
> A: If they had, I--I--I don't recall it, but I might have, if it was true. If they had made a presentation to her, she should tell them that.
>
> Q: Her version of it is that it was unconditional; in other words, you didn't say, 'If they made a presentation to you then tell people so', but rather, 'Tell them Eco-Clean made a presentation to you.'
>
> A: I don't recall doing that.
>
> Q: Could you have said it?
>
> A: I think I would have qualified it.
>
> (Schinz Transcript, Volume 3, Pages 551-552)

In the course of the Comptroller General's inquiry, Reid was examined under oath on several occasions. In order to get a flavour for his evidence, the reader must review the transcript as a whole but I commend in particular that portion of his second examination which occurred on October 30th, 1989, in Vancouver and which is contained at Volume 5, and in particular Pages 897 through 919. At Page 898 the following extract appears from Reid's evidence:

> I did have some concerns about Mr. Doonan and Mr. Sullivan having some participation with the City of White Rock and with the Community Pride, yes, I had some concerns, but in my own mind I weighed the entrepreneur, knowledgeable people, the best in the business that had come forward with a project and with some initiative.

The word "business" refers to the recycling business. The word "best" refers to Doonan and Sullivan. Doonan, as has been pointed out earlier, had some history in garbage collection and Sullivan was a self-acknowledged entrepreneur. At one point in her evidence Hendren stated that Sullivan was a "plastics expert". Sullivan's only apparent involvement with plastics was his attempt to market a plastic golfing tool. If Reid at Page 898 of the Transcript is representing Doonan and Sullivan as the best in the business, he is grossly overstating the facts.

At Page 900 of the Transcript, Reid is questioned as to why he had not disclosed his relationship with Doonan and Sullivan to others involved in the project. Among other things he stated as follows:

> So I mean I never--I never raised it, because that's not the reason for my recognizing the two participants. It was because of their expertise.

At Page 902 the following passage appears:

> Q: Aside from yourself, who else was aware of the full extent and detail of this project?
>
> A: Gordon Hogg, Alanna Hendren.
>
> Q: Well I suggest that it really all came together with you. You were the only one that really understood the whole thing; isn't that fair?
>
> A: It seems apparent now that not everybody was as enthusiastic and involved, I guess, as I was about the overall project.

It would appear that by answering in this manner Reid is attempting to obfuscate the issue. Another example of this obfuscation is seen at Page 903:

> Q: The mayor didn't even know that his application was deemed withdrawn on June 26 until sometime late in September. I'll just use that as one example.
>
> A: But you see the word 'deemed withdrawn' has never been 'withdrawn'. As a matter of fact, as far as I'm concerned, the application is still sitting on the file in Victoria. It's still in the file folder. The fact that we approved the GO B.C. project for the Semiahmoo Peninsula was launched encompassing all the applicants. You see, I did not approve the City of White Rock's project, because they did not ask for $277,065.00.

At the bottom of Page 904 and the top of Page 905 Reid again refers to the expertise of Doonan and Sullivan. He states as follows:

> A: ...And if you ask me today would I do it this way again, the absolute answer, as you would probably anticipate, is, 'No way. No way, because of the perception that's been drawn on it.' But if you ask me the expertise of the people, the answer is, 'They still have--they are the most expert in it. They are the ones making proposals.' But in--in explanation of it, the perception is why I'm here.
>
> Q: Well, if you deal with expertise for a minute, Doonan has never been involved with recycling, just with garbage; isn't that right?
>
> A: Yes.
>
> Q: Sullivan had some expertise in the manufacture of plastic items, but the company had no capital, no mold, no designs, I mean designs in the engineering sense. That's all true; isn't it? They were people with--you have to say 'yes' so we get it on the record. Is that 'yes'?
>
> A: The answer is yes.

Earlier in this report I made reference to guidelines that were in place to assist the "GO B.C." staff in assessing applications for funding. Virtually every guideline set up to govern "GO B.C." funding was breached in this case. Moreover, the manner of granting the funds was the subject of irregularities and unseemly haste. The matter is coloured by Reid's relationships with Doonan and Sullivan and he was clearly in a gross conflict of interest situation where they were involved. His personal involvement in the matter, including the manner in which he directed Hendren to give a purchase order to Doonan and Sullivan, was improper. The manner in which he disclosed the awarding of the grant at White Rock Council on June 26th, 1989, with his subsequent handing of the mock-up cheque to Hendren on the street smacks of deceit and subterfuge. Reid was anything but up front with Hogg and White Rock City Council. Throughout he acted in a fashion unworthy of a person in his position.

In relating the facts to you, I have focused on those aspects which I think to be relevant to this opinion. If I have omitted certain matters, it is because I am aware of your overall familiarity with the evidence taken at the Comptroller General's inquiry and the other materials on file.

It now has to be decided whether Reid, Doonan and Sullivan or any of them should be charged under Section 122 of the *Criminal Code*. As far as Doonan and Sullivan are concerned, they would be charged as parties to the offence by the application of Section 21 of the *Code*. Precedent for this may be found in *R. v. Robillard; R. v. Charbonneau* (1985) 18 C.C.C. (3d) 266, Quebec Court of Appeal. Although the evidence yields the conclusion that Doonan and Sullivan were the intended beneficiaries of the grant, there is little direct evidence to demonstrate their involvement in acts which could amount to aiding and abetting. They were certainly present at relevant times and on at least one occasion (July 5--the date the cheque was delivered) appeared to be in possession of information that could only have come from Reid's office. Their conduct is a matter of grave suspicion but falls short of satisfying the objective observer that they were engaged in inducing Reid to act in a manner contrary to Section 122 or in aiding and abetting him to do so. In my view the evidence against them falls short of the test of substantial likelihood of conviction and I accordingly recommend that they not be charged under Section 122 of the *Criminal Code*.

So far as Reid is concerned the matter is somewhat different. Although there is no evidence to support a proposition that he would have benefitted in any monetary way it can be said that his "personal ends" were being addressed by seeking to benefit his campaign manager, Doonan, and his daughter's close personal friend, Sullivan. The question is whether his conduct is of such a nature that the criminal law should be brought to bear upon it.

It seems to me that Reid's conduct went beyond what is euphemistically known as "pork barrelling." Pork barrelling implies the direction of public monies for local improvements and like projects for the purpose of ingratiating political representatives with their constituents. Reid's conduct goes beyond this.

Perhaps the key to the whole matter is the manner in which the direction for the grant was handled by Reid. Working from discussions that had taken place between himself and Doonan and Sullivan, the notes of the preliminary proposal prepared by Hendren, and the revised application from White Rock dated June 19th, 1989, Reid drafted a proposal which was faxed to the "GO B.C." staff, resulting in Martin and Markham drafting the grant application. A number of matters arise. The most significant is that the final figure attributed to the cost for purchasing the bins came to $187,700.00. Hendren's preliminary proposal of June 23rd, 1989, contained a total budget amounting to $58,179.00, largely for the purchase of a truck. This proposal was not based on any detailed investigation and was submitted on the assumption that White Rock would be purchasing the bins. (See Hendren Transcript, Volume 1, Pages 150-154.)

White Rock's revised application of June 19th, 1989, bore an increased cost which reflected the Doonan and Sullivan three-bin system. (See the evidence of Robert Gascoyne, Transcript, Volume 5, Page 681.) The actual revised application of June 19th, 1989, reflects a price of $120,000.00 for the purchase of "collection boxes", being 6,000 units at $20.00 per unit. Reid's notes, from which the grant was made, designate the sum of $187,700.00 for the boxes. Reid's evidence in this respect is contained in Volume 1 of the Transcripts between Pages 101 and 106. The figure of $187,700.00 includes a $50,000.00 cost, being research and development for the manufacture of a mold. Reid entered this figure on the basis of the representations of Doonan and Sullivan, who advised that they needed $50,000.00 for this purpose. The $50,000.00 then takes on the character of a hidden benefit which would be directed to Doonan and Sullivan for the purchase of a capital asset allowing them to make ongoing profits. In the grant application the $50,000.00 was not specifically dedicated to this purpose or identified:

> Q: Did you consider recording as a separate item the $50,000.00 towards the purchase of this capital asset, the mold?
>
> A: I had, but my advice from my--my director was that it should be included in the initial price of the container.
>
> (Reid Transcript, Volume 1, Page 107.)

The Director that Reid refers to in the above passage is Martin. Martin recalls no such conversation (see Martin Transcript, Volume 1, Pages 225-226) and Martin went on to say that funding of this nature (i.e., for a mold--a capital asset) was not consistent with "GO B.C." funding policy. (See Martin Transcript, Volume 1, Page 236.)

Reid was re-examined on this point and the relevant portions may be found at Volume 5, Pages 909 to 912. Reid reiterated that he had disclosed the $50,000.00 mold cost to Martin and expressed surprise that Martin didn't recollect this:

> I did discuss it with him. Now, if he doesn't recollect, that would surprise me, because Peter has a very good recollection, but if he doesn't recollect, I am surprised because the--the numbers we talked about for the--for the bins separately, and the additional $50,000.00 in order to bring the project viability around was recommended by--by Peter.

On being further pressed about this matter, Reid states as follows at Pages 911 and 912 of Volume 5:

> Okay. In clarification of that, then, I'm going--I'm going back to my memory now, Brian, and I would suggest that there is another--there is another staff member who was my Executive Assistant, Ministerial Assistant, who moved over to take Markham's place, and that transition between Doug Harms working directly for me in my office and working under Peter Martin, he now works for Peter Martin in the Ministry in the--in the "GO B.C." approval. In fact, Doug approves all the news releases and approves the--the actual making up of the big cheque and everything, and--and in explanation, then, if I--if I may, it may have been, that discussion might have been with Doug Harms. Okay?

I regard that evidence as untrustworthy. Whether Reid ever discussed the $50,000.00 cost for molds with anyone other than Doonan and Sullivan is a matter of debate. One thing that is clear is that he made it an express condition of the grant to Semiahmoo that Hendren purchase the bins from Doonan and Sullivan:

> Q: In your view was it a condition of their receiving this grant money that they buy the bins from Eco-Clean?
>
> A: Yes.
>
> (See Reid Transcript, Volume 1, Page 98)

All of this evidence leads the objective viewer to conclude that Reid directed the drafting of a grant and the subsequent manner in which the monies would be used in such a fashion as to directly benefit Doonan and Sullivan. He advised Hendren that she was to deal with Doonan and Sullivan and told her that they would be at her office on the morning of June 27th, 1989, to obtain a purchase order. The purchase order included the hidden cost of $50,000.00 for the production of a mold which would have become a capital asset of Eco-Clean. When asked what was to happen to the $50,000.00 should the project not go through, Reid's answers are less than convincing:

> Q: Just a couple more points. The $50,000.00 for research and development, which was targeted towards the cost of the mold, if it developed that Eco-Clean did not need to order the mold, what would you have expected them to do with that sum?

> A: Refund it.
>
> Q: Refund it?
>
> A: Refund, yes.
>
> Q: Back to the Society which would--
>
> A: Would send it back to the government. There was no doubt about that, because there was a discussion with them about the--by purchasing, and--and I guess--with me in a round about discussions, about the ownership of the mold became quite--quite important. If the British Columbia government would have a partnership in the mold, that meant the mold would stay in British Columbia, and so that would guarantee a manufacturer here, and the pay-back of the mold would come from the sales of the bins as the orders were placed.
>
> (See Reid Transcript, Volume 6, Pages 998-999.)

Viewed objectively, one is driven to the conclusion that Reid acted in a manner that was improper and inconsistent with the high office he held. There are aspects of his conduct which were high-handed and other aspects which bear the mark of deceit. The "personal ends" to be achieved were the benefitting of his campaign manager, Doonan, and his daughter's close friend, Sullivan. In my view, there is a substantial likelihood of conviction and I recommend the charge against Reid under Section 122 of the *Criminal Code*.

Were it not for evidence of what I consider amounts to deceitful acts by Reid, I would not recommend a charge in this case, notwithstanding the case law surrounding Section 122. I believe the criminal law must be used with restraint and that the concept of *mens rea* must embrace an element of *mala fides*. Inasmuch as the existing case law and particularly those cases from Quebec indicate that evidence of dishonesty or corruption or deceit is not required for there to be a conviction under Section 122, nevertheless I would not recommend a charge of this nature unless one of these elements was present. However, having identified matters which I have concluded yield a reasonable inference of deceit I feel that a charge is warranted.

I confess that this has been an extremely difficult decision to render. I have had to guard against my sympathies for Reid, both in terms of what he has gone through and what he is likely to go through if a charge is laid. I am cognizant as well of Reid's personal circumstances and his apparent belief that a community recycling project would have done much for civic pride. On the other hand, I think that the public trust and public confidence must be kept firmly in mind. My view is that Reid breached the public trust in this case to such an extent that a criminal charge should flow.

Inasmuch as I have found this decision to be a most difficult one, I think that you may wish to consider obtaining a second outside opinion. This case is a troubling one and a further independent view of the facts may well be warranted given the high profile of the matter and the significant repercussions of proceeding with a charge in this case.

Yours truly,

ROBERTSON, PECK, THOMPSON

Richard C. C. Peck, Q. C.

RCCP/el

DISCRETION TO
PROSECUTE INQUIRY

EXHIBIT #: 12

DATE: May 4, 1990

January 19, 1990

Mr. John E. Hall, Q.C.
DuMoulin, Black
Barristers and Solicitors
1000 - 595 Howe Street
Vancouver, British Columbia
V6C 2T5

Dear Sir:

Re: Investigation into William Earl Reid, et al

Further to our telephone conversation of this morning I write to confirm that you will provide our office with your legal opinion concerning the appropriateness of criminal charges in the above noted matter.

I enclose in this package a copy of the R.C.M.P. investigation material, six volumes of transcripts from the Comptroller General's Inquiry, the subsequent report of the findings of the Comptroller General, a legal opinion received this morning from Richard C. C. Peck, Q.C., as well as the draft version of my own opinion.

You will quickly see that Mr. Peck and I have come to opposite conclusions about the suitability of criminal charges herein. It would be appreciated if your review could be completed prior to the end of January. Please feel free to contact any of the parties involved with this material at any time should you require additional information.

We are pleased to retain you at the amount of $150.00 per hour and look forward to receiving your opinion at your earliest available opportunity.

Yours truly,

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 13
DATE: May 4, 1990
KRH

DUMOULIN BLACK

BARRISTERS & SOLICITORS

MICHAEL L. DUMOULIN
W DAVID BLACK
GEORGE R. BRAZIER
JOHN E. HALL, Q.C.
SARGENT H. BERNER
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FILE NO. 86-25

January 29, 1990

Regional Crown Counsel
307 - 815 Hornby Street
Vancouver, B.C.
V6Z 2E6

Attention: Robert H. Wright, Q.C.

Dear Sirs,

RE: Eco-Clean Waste Systems Ltd.

"The Chairman: Q. So the awarding of a grant in this way without the staff having all the correspondence before them was not the normal practice?
A. Not at all. No, it did happen on occasion and I certainly wasn't alarmed. I must admit as a staff person you assume that the people above you, especially a cabinet minister, that they know what they are doing and they know enough to keep out of trouble." (my underlining).

(Evidence of Lisa Markham, former Coordinator of the Go BC Program October 27, 1989, p. 605 at the hearings before the Comptroller General).

In this case, the staff were under a complete misapprehension in their assumption that the Cabinet Minister knew what he was doing and could stay out of trouble. The Cabinet Minister was William Earl Reid ("Reid"), formerly Ministry of Tourism and Provincial Secretary.

This matter seems to have had its genesis in the early spring of 1989. The campaign manager of Reid, George Doonan ("Doonan"), and Bill Sullivan ("Sullivan"), a close friend of the Minister who had a long standing relationship with a daughter of the Minister, decided that the road to riches lay through the waste recycling business. Doonan had had experience in the trucking business and in the waste business and Sullivan had some experience in real estate as well as some experience with manufacturing and distributing a plastic golf product. Doonan and Sullivan wanted to get into the recycling business in a big way. They thought that they had better try negotiating with the government to get some assistance (evidence of Doonan and Sullivan October 11, 1989). There was in existence a company owned by Mr. Doonan's wife that ultimately became Eco-Clean Waste Systems Ltd. - its original name had been Jarie Holdings Ltd. Mr. Reid was able to arrange a meeting between Sullivan and Doonan, and representatives of the Ministry of the Environment and the B.C. Purchasing Commission. This meeting was held on May 18 in Victoria in Mr. Reid's office. Mr. Reid at all material times was Provincial Secretary with ultimate responsibility for the granting of monies from a program known as "Go BC Grants".

Mr. Sullivan said about this meeting: "The understanding I came away with from that meeting is that the provincial government would fund a pilot project for the province. It was up to us to find and sell a municipality or city on our system." Mr. Sullivan said that they had been advised at the meeting that the City of White Rock had applied for this type of funding. Messrs. Sullivan and Doonan, who were resident of that general area, went to City Council and staff of White Rock to push their idea for a multi-material recycling project. In June, Mr. Sullivan wrote some letters to Mr. Reid's office keeping him advised of their progress and encouraging the project. Messrs. Sullivan and Doonan continued to do research into the viability of the project and made a presentation to the Council of White Rock on the 19th of June, 1989.

For quite some time prior to 1988, Semiahmoo House Society ("Semiahmoo") had had a paper recycling program that they operated in White Rock. This was partly subsidized by White Rock Council. Semiahmoo was a charitable organization which had a commitment to helping disadvantaged adults.

On the afternoon of June 26, Alanna Hendren ("Hendren"), the executive director of Semiahmoo, got a phone call from Mr. Reid's office advising her to be at a White Rock Council meeting that night. Messrs. Sullivan and Doonan were also told to be there. Mr. Reid and his executive assistant arrived at White Rock Council and announced a grant of $277,065.00 for a waste recycling project. Semiahmoo had previously applied for some funding of a modest nature (about $7,500.00) for a computer project that they wanted to undertake but they had not made any formal application for a grant for this recycling program - on the 23rd of June they did have some contact with Mr. Schinz, the assistant to Mr. Reid concerning possibly getting a grant for about $60,000.00 towards buying a truck that they could use for their paper recycling project.

Mrs. Hendren was told that the money ($277,000.00 for the multi-material recycling program) was coming to her organization, but from the way that the news release was read out at the City Council meeting at White Rock, the Council thought they were getting the funding. So Semiahmoo who had applied for a grant of about $7,500.00 to assist in a computer purchase wound up being showered with $277,000.00 for this recycling program. The society had submitted no formal application for this and the grant came somewhat as a bolt from the blue.

Mrs. Hendren said that Mr. Reid had indicated on the evening of the 26th that Messrs. Doonan and Sullivan would go to her office to get a "purchase order". This was to be a purchase order for equipment that was needed for the recycling project. Mr. Reid had further told Mrs. Hendren that 50% of the money was going to be paid at once when they made the purchase order, and 50% upon delivery because he wanted to fast track this operation. Mrs. Hendren said that she was told that Messrs. Doonan and Sullivan were the only ones capable of producing the required materials needed for the recycling project. Messrs. Doonan and Sullivan did attend on Semiahmoo the next day to get a purchase order for $277,000.00.

On the 5th of July the Society was advised that a cheque for one-half of the amount of the grant was at Reid's office and would they please come and pick it up. They did this, and almost immediately heard from Mr. Sullivan enquiring as to whether or not they had received the cheque. A cheque was made out by the Society to Eco-Clean Waste Systems Ltd. for the full amount of the cheque received by Semiahmoo. The money went into an account in the name of Eco-Clean Waste Systems Ltd. at the Delta branch of the Bank of British Columbia.

Mr. Doonan said in evidence on October 11, 1989: "There was three, four cheques written, one for $35.49 for a shovel and a broom, one for Rollins Machinery on a packer body of $1,000.00, one to Co-Van International, a truck deposit for $2,000.00, and the fourth cheque was $135,496.51 to the firm Seaton Promislow "in trust". This latter cheque was written after controversy had arisen in late September surrounding this grant.

One matter that was clearly of significance was that if the money went to White Rock that there would likely be a tendering process required whereas if it went to Semiahmoo then a tendering requirement would not be so likely. It will be recalled that Mr. Reid had, on the evening of the 26th of June, told Mrs. Hendren that she should deal with the Eco-Clean people and this she did. She said she understood this was what she was to do and so she never thought of tendering for offers.

It is abundantly clear from the evidence of Reid's staff associated with the "Go" Program that this grant was not done in the ordinary and usual way. In fact it was put together by Mr. Reid himself in his handwriting. The ultimate beneficiary of all the funds, of course, was the company, Eco-Clean, which was under the control of Messrs. Doonan and Sullivan.

You have asked me whether or not I would recommend charges against any of the participants in this scheme. It was suggested that there might have been a fraud on the City of White Rock. I think that White Rock believed that they were going to get this particular grant and indeed even after the announcement they were still of the view that they were the recipients. However, it is something that lies within the discretion of government as to who will be awarded funds and I do not see that White Rock has been defrauded of any goods or property to which they would have a legal or equitable claim. On the facts as I see them, a charge of fraud is simply not sustainable against anyone in this case.

As a public official, Mr. Reid had a duty to behave with probity and propriety. The nonsensical machinations that went on concerning this grant in this case are not what we expect of our elected officials. If all officials in public office in the province conducted themselves as Mr. Reid did in this case, we should shortly be at the level of public morality that existed in the Capone era in Chicago. S. 122 (formerly s. 111) of the Criminal Code deals with the question of a breach by an official of his public trust. This section reads as follows:

> "122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

I have had considerable experience with cases concerning this section, and it really comes down to a question of a breach of duty or abuse of public confidence by an elected or appointed official. There is a body of common law precedent which deals with misbehaviour in office and some of the expression of the Courts used over the years are quite sweeping.

My analysis of the cases starting with R. v. Arnoldi (1893) 23 OR 201 going through to R. v. McKitka (1982) 66 CCC (2d) 164, indicates to me that generally speaking there will have been some sort of benefit or advantage accruing to a party charged under this section. This is clearly not a sine qua non as the case of Cyr (1985) 44 CR (3d) 87, a Quebec case, makes plain, but it is usual to find a benefit or advantage flowing from the acts of the accused. For instance, in Arnoldi, the accused had leased a tug that he owned in a concealed way to the government. It was his duty to audit the expenditure of government funds on the contract. In effect, he approved payments to himself although no exorbitant profits were realized. Clearly he was getting a benefit and he was duly convicted. Likewise, in the case of McMorran (1948) OR 384, McMorran had used his position as an allocations officer of the Wool Administration of the War Time Prices and Trade Board to grant favourable treatment to his own company. In the case of McKitka, which I prosecuted, the former mayor of Surrey was found guilty by the jury in a situation where he had, after being approached by some constituents for advice concerning their land, sought to covertly obtain for his own use and benefit the land which potentially was quite valuable because of likely zoning changes. As will be noted, in all these cases there was an element of corrupt benefit sought or obtained.

In the instant case, any benefits flowed or would have flowed to Messrs. Doonan and Sullivan. For that reason I have very carefully scrutinized their role in events since it seemed to me that there could be a case made out against them of counselling. Reid to commit a breach of trust of his office. As I have noted above, it appears that the two men were the originators of the idea and discussed it with Reid during the spring of 1989. In effect, they were asking Reid to use his position to confer financial benefits upon them. S. 22 of the Criminal Code provides that everyone who counsels another person to be a party to an offence is himself a party to that offence.

In order to assess the possible criminal liability of Messrs. Doonan and Sullivan, I have had regard to what happened to the funds after they passed from Semiahmoo to Eco-Clean. In the two and one-half months between the receipt of the funds and the avalanche of publicity that led to the demise of this half-baked scheme, nothing much did happen by way of dissipation of the funds. Minor deposits went out, but I cannot see any money going to Messrs. Doonan and Sullivan for any personal ends.

It is interesting to note that the progression of events throughout the summer of 1989 was that the municipal staff at White Rock became increasingly skeptical of the ability of Semiahmoo to perform, and indeed were concerned even as to the desirability of this particular project. Semiahmoo itself came to the conclusion that it had bitten off more than it could chew and was of a mind to give the funds back and tell the Minister that it couldn't carry on. In other words, the whole operation was more or less collapsing of its own accord.

Because of the role that Messrs. Doonan and Sullivan played herein as the facilitators of the project, and having regard to conduct of theirs such as arriving at the doorstep of Semiahmoo very quickly to press on with getting a purchase order and also to get the proceeds of the initial cheque, I have examined with some suspicion their involvement. In a moral sense, I view their participation in this scheme as somewhat more serious than that of the Minister. I think that they could be charged with counselling Reid to commit a breach of trust of his office, but there is precious little direct evidence (as might be expected) and it would be matter of drawing inferences that they urged Reid to divert the funds from White Rock to Semiahmoo to facilitate their ability to access the funds. Because of the absence of any personal benefit ultimately accruing to them from the funds, I think that the case against them is not a very strong one and bearing in mind its circumstantial nature, I would be of the view that it would be a somewhat speculative prosecution.

As concerns Mr. Reid himself, the quality of oblivion or naivete that he exhibited in connection with this matter is truly mind boggling. It strains the bounds of credulity to believe that he could for one minute have believed that he was acting in an appropriate fashion in connection with the allocation of these funds. Yet, having reviewed a transcript of his evidence, I am led to the conclusion that he somehow convinced himself that he could actually undertake this course of conduct without committing a crime. There is some evidence that he was not entirely candid about what was happening as regards the grant. I have regard to his conduct at the White Rock Council meeting where he failed to make clear just who was getting the money, and also the incident concerning the giving of the large representational cardboard cheque to Mrs. Hendren - this is often done for publicity purposes but apparently it was not done in public in this case but was given to Mrs. Hendren outside on the street on the evening of June 26. Secrecy and lack of candor are, of course, indicia or badges of fraudulent conduct. There is also the question of the indecent haste with which this project was diverted from White Rock to Semiahmoo and the personal involvement of the Minister to the exclusion of his staff and the failure to go through normal channels. Undoubtedly there is a prima facie case of breach of trust or misbehaviour in office (and I view misbehaviour in office as the true gravemen of this offence) but as I noted, the Crown cannot in this case prove any personal advantage or benefit accruing to Mr. Reid from his activities. There was also a suggestion in the transcripts of evidence that he considered there could be union jurisdictional problems in having White Rock City staff do the labour (if they had to go beyond White Rock environs as he wished the project to encompass more than just White Rock). Thus he favoured giving the funds to Semiahmoo.

My own analysis of the situation is that there is a fair probability that Mr. Reid would be acquitted by a judge hearing this case - he might well be convicted by a jury who would probably be so offended by his conduct that they wouldn't enter into the niceties of mens rea and personal benefit.

I am inclined to think that it would be a prosecution in which Mr. Reid would have a slightly better than even chance of being acquitted. It would concern me if such a result were taken to mean that he was somehow "cleared" and that he should be then restored to a cabinet position. I think this would be tragic, for if someone with his degree of perspicacity as to what is appropriate conduct is to be permitted in cabinet, it is a frightening prospect. He has acted improperly as I think clearly emerges from the report of the Comptroller General. Hopefully, the release of that report may ensure that he is not put back into a position where he can abuse public trust and confidence in the way he did in this case.

The money probably will be largely salvaged and Mr. Reid has been removed as a cabinet minister. I do not see much wisdom in prosecuting Reid, Doonan or Sullivan in this case. The test that I use is whether or not I would want to prosecute the cases and I must say that I would not have overwhelming confidence in charges of counselling against Doonan and Sullivan, or breach of s. 122 against Reid. For these reasons, I do not recommend prosecution in the instant case.

Yours truly,

DuMOULIN BLACK
PER:

JOHN E. HALL
JEH/jg

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT #: 14
DATE: May 4, 1990

February 7, 1990

BY COURIER

E. N. (Ted) Hughes, Q.C.
Deputy Attorney General

Re: William Earl Reid

I enclose in this package a copy of the R.C.M.P. investigation material, six volumes of transcripts from the Comptroller General's Inquiry, the subsequent report of the findings of the Comptroller General, a legal opinion from Richard C.C. Peck, Q.C. and John E. Hall, Q.C. along with my own opinion.

I trust the enclosed will be of assistance to you and I would be pleased to provide any additional information should your require.

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

Enclosures

RCMP GRC

B. WRIGHT

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 15
DATE: May 4, 1990
HPH

REGINA

v.

William Earl REID et. al.

Breach of Trust By Public Officer, s.122 C.C.
Fraud, s.380(1)(a) C.C.

Investigator:

Insp. E.C. MacAulay
Commercial Crime Section
Vancouver, B.C.
(604) 264-2290

EXHIBIT # 16

DATE: May 4, 1990

Royal Canadian Mounted Police
Gendarmerie royale du Canada

Security Classification/Designation Classification/désignation sécuritaire	PROTECTED "A"
Priority – Priorité	URGENT
Date	90-02-09
File No. – N° de dossier	
Reference No. – N° de référence	

FACSIMILE TRANSMITTAL
ENVOI D'UN FAC-SIMILÉ

TO
À

NAME NOM	THE HON. E.N. HUGHES, Q.C.	TELEPHONE NO. N° DE TÉLÉPHONE	660-2400
ADDRESS ADRESSE	815 HORNBY ST., VANCOUVER, B.C.		
		FAX NO. N° DE FAC-SIMILÉ	660-1103

FROM
DE

NAME NOM	D/COMMR. D.K. WILSON	TELEPHONE NO. N° DE TÉLÉPHONE	264-2000
ADDRESS ADRESSE	C.O. "E" DIV. RCMP		
		FAX NO. N° DE FAC-SIMILÉ	264-3196

Total number of pages to follow including this one
Nombre total de pages à suivre y compris celle-ci: 10

COMMENTS
COMMENTAIRES

Re our conversation of 90-02-08.

The RCMP submission in this regard is forwarded herewith.

D.K. Wilson D/C

Operator – Opérateur	Telephone No. – N° de téléphone
H.m. MacKinnon C/ST	264-2066

1676 (89-04) 7530-21-806-1082

Canada

Royal Canadian Mounted Police
Gendarmerie royale du Canada

Commanding Officer
Commandant divisionnaire

"E" Division
657 West 37th. Avenue, VANCOUVER, B.C. V5Z 1K6

Your file Votre référence

Our file Notre référence

February 7th., 1990

89E-15304

Hon. E.N. Hughes, Q.C.
Deputy Attorney General
Ministry of the Attorney General
5th. Floor, 910 Government Street
VICTORIA, British Columbia
V8V 1X4

Dear Mr. Hughes:

RE: William Earl REID

Following receipt of a letter, dated January 30, 1990, from your Assistant, William F. Stewart, I have reviewed the three opinions and directed the Officer in Charge of Vancouver Commercial Crime Section to provide me with his analysis of the opinions (a copy of which is enclosed). Regretfully, we are not in total agreement with Mr. Stewart's proposed disposition of this matter. While we are in agreement with the three counsel's views that the fraud is too tenuous to undertake as a viable prosecution and that there is insufficient evidence to prosecute George Gordon Doonan and Richard William Sullivan as parties to the offence of breach of public trust, we are of the view that the proposed charge against Reid (under s.122 of the Criminal Code) deserves further consideration.

I am asking you to reconsider the Ministry's position on this matter with respect to your willingness to prosecute Reid utilizing the evidence currently available plus the testimony of Doonan and Sullivan which will be available if they are not charged with Reid.

....2

The matter of the premature release of Mr. Stewart's decision to the media is also of concern to me. I would have preferred to have had a reasonable opportunity to consider the legal opinions rendered, and accept Mr. Stewart's invitation to discuss this matter, prior to the Ministry's position being communicated to the media.

Thank you for your consideration of this matter and I look forward to the results of your review.

D.K. WILSON, Deputy Commissioner
Commanding Officer
"E" Division

MEMORANDUM **NOTE DE SERVICE**

To / A: OIC Federal Operations
"E" Division

From / De: OIC Vancouver C.C.S.

Security Classification - Classification de sécurité: PROTECTED "A"

Our File - Notre référence:

Your File - Votre référence: 89E-15304

Date: 90-02-05

Subject / Objet: RE: William Earl REID (DOB: 1934-08-13)
Breach of Trust by Public Officer, s. 122 C.C.,
White Rock, B.C. between 89-06-02 and 89-09-20

As requested in the A-5 of the C.O. and the OIC Criminal Operations dated 90-01-31 and your forwarding minute of 90-02-01, we have reviewed the following legal opinions on this matter:

1) Opinion dated 90-01-17 given by Robert H. WRIGHT, Q.C., Regional Crown Counsel;
2) Opinion dated 90-01-18 given by Richard C.C. PECK, Q.C., of Robertson, Peck, Thompson; and
3) Opinion dated 90-01-29 given by John E. HALL, Q.C., of DuMoulin, Black.

I will present our views on the potential fraud charge, review the three opinions in the order in which they were rendered, and provide you with our recommended course of action.

PROPOSED FRAUD CHARGE

The court brief on this matter indicated a potential charge under s.380(1)(a) C.C. against REID, George Gordon DOONAN, and Richard William SULLIVAN jointly. The basis for this charge was the deceitful diversion of the funds applied for by the Corporation of the City of White Rock to the Semiahmoo House Society then to Eco-Clean Waste Systems Ltd.

All three opinions rather summarily dismissed the potential for a perceived lack of ability to establish that the Corporation of the City of White Rock was dishonestly deprived "of any property, money or valuable security". The definition of 'property' in s.2 C.C. uses the word "includes" and is, therefore, not an exhaustive definition of 'property' (as is the s.428 definition for the purposes of Part XI C.C.) but, rather, is an expansive definition utilized to enlarge the usual meaning of the term.

....2

Although we are of the view that the Corporation of the City of White Rock may have a provable property interest in their GO BC Grant application and, in conjunction with a reasonable application of the rule in R. v. Olan, Hudson and Hartnett (1978), 5 C.R.(3d)1, 41 C.C.C. (2d)145, 86 D.L.R. (3d)212, [1978] 2 S.C.R. 1175, 21 N.R. 504 (S.C.C.), a fraud prosecution is available, we are not recommending the laying of a fraud charge with significant theoretical constituent elements.

REGIONAL CROWN COUNSEL's OPINION

Mr. WRIGHT's analysis of s.122 focuses on a literal reading of the statutory provision which leads him to conclude that it ordinarily can only be violated by the official committing a s.380 C.C. fraud or a s.336 C.C. breach of trust. This analysis fails to consider the purpose for including this provision in Canadian criminal law. In the seminal case in this area, R. v. Bembridge (1783), 99 E.R.679, Lord Mansfield stated at p.681:

> "...that a man accepting an office of trust concerning the public, especially if attended with profit, is answerable criminally to the King for misbehaviour in his office; this is true by whomever and in whatever way the officer is appointed.... Where there is a breach of trust, fraud or imposition, in a matter concerning the public, though as between individuals it would only be actionable, yet as between the King and the subject it is indictable."

An analysis of the cases that succeeded Bembridge leads one to the inescapable conclusion that s.122 can be breached without a breach of trust with respect to trust property, R. v. Campbell, [1967] 3 C.C.C. 250, 50 C.R.270 (Ont. C.A.), affirmed 2 C.R.N.S. 403 (S.C.C.), and it does not require dishonesty, corruption, or economic prejudice to the government, R. v. Hébert, [1986] R.J.Q. 236 (Qué. C.A.). The provision is obviously designed to impose a high standard of conduct on those appointed to discharge a public duty or elected to public office. Any significant departure from this standard is subject to criminal sanctions if engaged in by 'officials' (as defined in s.118) even though it would only be tortuous if done by non-officials. There is little doubt that if an official commits a civil fraud with respect to the discharging of his/her public duties, it can amount to a breach of s.122.

At p.29 of his opinion, Mr. WRIGHT relied on an erroneous interpretation of the facts where he suggested that REID's friendship was known to the White Rock and Semiahmoo House Society officials. This view overlooks the fact that DOONAN and SULLIVAN were shielded behind a corporate entity whose only officer or director was DOONAN's spouse and which, for a significant portion of the relevant period, was operating under an as yet unregistered name. While Mayor HOGG may have known of

....3

REID's relationships with DOONAN and SULLIVAN, his Administrator and Engineer had no knowledge of the relationship until September, 1989 and were still uncertain of the nature of the relationship when they were interviewed in October 1989. The Executive Director of the Semiahmoo House Society did not even meet DOONAN and SULLIVAN until just before the grants were announced on 89-06-26 and only became aware of the relationships following the publicity 89-09-20.

Mr. WRIGHT places significant emphasis on the lack of personal benefit accruing to REID as an impediment to a s.122 prosecution. In Bembridge, supra., an accountant in the office of the postmaster-general failed to properly record accounts receivable from a third party. There was no indication that Charles Bembridge received any benefit, nevertheless, he was found guilty of the equivalent of s.122 for failing to properly discharge his public duty. In another early case, R. v. Arnoldi (1892), 23 O.R.201 (H.C.J.) (which was applied in Campbell, supra., and R. v. McKitka (1982), 66 C.C.C. (2d)164, 35 B.C.L.R. 116 (C.A.), an employee of the Canadian public service certified the justness and accuracy of a series of accounts for services rendered to the government by contractors some of which were beneficially owned by himself. Despite the fact that all the services were rendered, all accounts were reasonable, there were no undue gains made by the accused, and the government suffered no economic loss, Arnoldi was convicted of what is now s.122. The defence that there was no loss to the government was rejected by the court in these words at p.209:

> "Upon this statement of facts, it is urged that no criminal offence exists, because it is essential that pecuniary damage should result to the public by reason of the irregular conduct of the officer. But, in my opinion the gravity of this administrative transgression is not to be measured by mere pecuniary results. The defendant was tempted to do what he did by the prospect of gain, he profited by his own dereliction of duty, and to accomplish his purpose it was necessary to conceal the actual transaction. This was misbehaviour in office, which is an indictable offence at common law."

Mr. WRIGHT's search for personal benefit appears restricted to funds directly being paid to REID. This analysis overlooks the significant political benefit that would be gained from implementing a major recycling program in his constituency and the indirect benefit accruing from establishing a lucrative business opportunity for two close associates.

While we agree that direct or indirect personal benefit makes a breach of public trust more flagrant, the lack of personal benefit (especially in a case where there is actual economic prejudice to the government) is not an impediment to a prosecution under s.122 but would be a relevant consideration at the time of sentencing.

Mr. WRIGHT's overall analysis appears to examine the various constituent elements of s.122 and the various pieces of evidence individually rather than considering the cumulative effect of the evidence. In R. v. Morin (1988), 44 C.C.C. (3d) 193 (S.C.C.) triers of fact are cautioned against falling into the error of applying the criminal standard (proof beyond a reasonable doubt) to individual pieces of evidence. While the Crown bears the burden of proving each constituent element of the offence beyond a reasonable doubt, there is no such requirement to subject each fact in isolation to this test and the trier of fact is entitled to look at the totality of evidence. Although Morin was a murder case, and we are dealing with misconduct by a public official, the principle is obviously applicable and, perhaps, even more so in a provision which Parliament and the courts have deliberately chosen not to confine to any specific courses of conduct so that the unique fact pattern of each case can be examined to determine whether it is caught by the provision.

Richard C.C. PECK's OPINION

In contrast to Mr. WRIGHT, Mr. PECK expressed the view that no direct or indirect personal gain is required for a prosecution under s.122 and he provided the following statement for this principle from [1986] 2 Canadian Abridgement, Fifth Perm-Supp., V.3, p.12:

> "A breach of trust offence implies the use of a public office by an official for his or her own personal ends. The conduct need not be corrupt. His or her mere presence may be sufficient. There is no need for the official to benefit directly or indirectly for the offence to be committed."

He then pointed out the case of R. v. Cyr, [1984] C.A. 254 (Qué. C.A.) from which the above statement was derived. We are in complete agreement with the above as a correct statement of the law.

We are also in complete agreement with Mr. PECK's interpretation of the facts (and, indeed, are impressed with his complete grasp of the nuances that would only be discerned by a very thorough review of the material provided), we are in complete agreement that s.122 is to be given an expansive interpretation (for the reasons given earlier), and with his view (at p.5) that "the evidence must be capable of demonstrating directly or by inference that the conduct of the accused was aimed at advancing his personal ends."

....5

Mr. PECK gave considerable emphasis to the deceitful manner in which the $50,000 'research and development' (actually a portion of the cost of the mold) was concealed in the grant and the subsequent purchase order, the avoidance of the tendering process, and the deceitful public announcement at White Rock Council's meeting of 89-06-26 which, in our view, were not given appropriate consideration by Mr. WRIGHT.

Although we may not be perceived to be objective observers, on balance, Mr. PECK provided the most discerning analysis of the facts and the most compelling application of the relevant law to the facts.

MR. HALL's OPINION

Mr. HALL rendered his opinion last and had the benefit of the opinions rendered previously by WRIGHT and PECK. Despite this advantage, it is disappointingly lacking in substance. His analysis begins with the Arnoldi case and ignores the Bembridge decision which is the genesis of the present s.122. He seems to totally overlook any significance to the awarding of 100% of the Semiahmoo House Society's applicationn for funding of their computer project on the same date that the society was awarded $277,065 which it did not apply for. His analysis led him to the conclusion that no personal benefit accrued to either DOONAN or SULLIVAN. This totally ignores the $50,000 'research and development' component of the grant (which was actually designed to fund half the cost of an injection mold that would have been owned by Eco-Clean Waste Systems Ltd.) which was buried in the cost of the recycling bins. His analysis of personal benefit seems to have been limited to examining the payees of the four cheques from the account and did not extend to considering the hidden contribution to the cost of the mold or REID's facilitation of DOONAN and SULLIVAN's efforts to have Eco-Clean Waste Systems Ltd. established as the only supplier of such product in the province.

Mr. HALL is of the view that REID did not personally benefit from his conduct and that any benefit that did or could flow would accrue to DOONAN and SULLIVAN. Although he has an accurate understanding that the essence of s.122 is misbehaviour by an official, his analysis suffers from the same frailties that I identified earlier in my analysis of Mr. WRIGHT's opinion, that is, personal benefit is a desirable (but not essential) ingredient of s.122 and is a matter more relevant on sentencing day.

In the last paragraph of page 5, Mr. HALL reaches the rather alarming conclusion that "[i]n a moral sense, I view their participation in this scheme as somewhat more serious than that of the Minister." Ignoring morality issues and confining our considerations to legal concerns, the law would seem to levy the

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same culpability to all parties to such an offence by virtue of s.21 C.C. Although in another public corruption provision, s.121 C.C., Parliament has provided an equal sanction to the corrupt donor [ss.121(1)(a)(i) and 121(1)(b)] as has been provided for the corrupt recipient [ss.121(1)(a)(ii) and 121(1)(c)], courts have tended to punish the official more harshly than the ordinary citizen. There are sound policy reasons for this approach as the public is entitled to expect a higher standard of conduct from its appointed and elected officials and the best defence against corruption must be an honest government.

Another reason that Mr. HALL seems to rely on is that there is the prospect of recovering the money. This reasoning ignores the cost of the Comptroller General's Inquiry and other costs which will far exceed any such recovery. Additionally, any recovery will have to be on a voluntary basis as the Province of B.C. has an exceptionally poor prospect of recovery on a legal basis due to the conduct of REID.

PARTIES TO THE OFFENCE

Recognizing that non-officials can be convicted under s.122 as parties to the offence [see R. v. Robillard (1985), 18 C.C.C.(3d) 266 (Qué. C.A.)], we are in substantial agreement with all three counsel that there appears to be insufficient evidence to prosecute either DOONAN or SULLIVAN as a party to the offence and that they could be witnesses against REID if they are not prosecuted. Although they may be regarded as accomplices, their evidence may be accepted as any other witness, Vetrovec v. The Queen (1982), 67 C.C.C.(2d) 1, 136 D.L.R. (3d) 89, 27 C.R. (3d) 304, 41 N.R. 606 (S.C.C.).

THE TESTS UTILIZED

The Assistant Deputy Attorney General has decided not to "...approve the laying of any charges under the Criminal Code" because there is not a substantial likelihood of conviction. The suggestion of such an official 'approving' the laying of charges fails to recognize the right conferred on any person (by s.504 C.C.) to lay an information if he/she has reasonable grounds to believe that a person has committed an indictable offence. While the usual test (for instituting criminal proceedings) in this jurisdiction is a two-prong test of a substantial likelihood of conviction and that the prosecution is in the public interest, there has been little discussion of the second element of the test in any of the opinions rendered. All three opinions suggest that there is at least a prima facie case and the difference lies only in the various assessments of the probability of success. Two of the counsel (PECK and HALL) are of the view that a jury would convict REID under s.122. We concur fully with the test used in this jurisdiction, i.e., the substantial likelihood of conviction and the public interest served by the prosecution.

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However, if the interpretation of the substantial likelihood aspects of the test result in an elevation of the standard to the point that it effectively amounts to virtual certainty of conviction before prosecution will ensue, the impression of administrative usurping of proper judicial determination of the issues in question is created. In my view, this is totally improper and flies squarely in the face of the public interest we all want to ensure is preserved; I am sure that we are all in agreement that the potential for these kinds of impressions should be studiously avoided.

None of the opinions adequately addressed the issue of whether or not a prosecution in this matter would be in the public interest. There was some limited discussion of the inadvisability of proceeding in the matter because REID's conduct has been seriously criticized by the Comptroller General and that his political future may be in jeopardy. While such concerns are appropriate, it is not a compelling argument given the flagrant disregard of the disability that accompanies the conviction of a "felony or any infamous crime" (as provided for in the Constitution Act, R.S.B.C. 1979, c.62, s.54) that is being displayed in the Walter DAVIDSON case. A more appropriate concern would be general deterrence to ensure that elected and appointed officials adhere to an appropriate standard of conduct.

RECOMMENDATIONS

We recommend that charges not be laid against DOONAN and SULLIVAN and that, instead, they be interviewed as witnesses to strengthen the case against REID. They are not likely to be cooperative but I would not consider this matter to be completely investigated until these persons are interviewed. Following these interviews, we recommend that consideration be given to laying a charge under s.122 C.C. against REID.

(R.G. FISCHER) Supt.
OIC Vancouver C.C.S.

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 17
DATE: May 4, 1990

Bob:

Here is the draft for Bill Stewart.

Bill telephoned and is setting up a meeting for tomorrow, Tuesday, February 13, at 5:00 p.m. in the boardroom on the second floor. Those attending will be Ted Hughes, Bill Stewart, Rick Peck, Ace Henderson, John Hall and yourself. Any problem with this meeting please call Bill.

Bill also advises that as long as he has this analysis sometime today, not necessarily before noon.

Pauline

February 12, 1990

CONFIDENTIAL BY FAX

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

Re: William Earl Reid

Following your instructions I have reviewed the letter of February 7, 1990 from Superintendent R. G. Fischer which concerns an analysis of the legal opinions obtained in the above noted case.

Let me begin the analysis by pointing out the bottom line. Superintendent Fischer is not recommending that Reid be prosecuted at this stage. He is instead suggesting that the police interview Doonan and Sullivan in an attempt to strengthen the case against Reid. I point this out for a number of reasons the least of which is this may be a "out" for Mr. Hughes. If further investigation were to reveal more evidence then of course this matter could be reconsidered. I do point out to you however, that this investigation of Inspector MacAulay left much to be desired. Doonan and Sullivan were not interviewed by the police and indeed no reference is made of their "side of the story" in the court brief submitted to our office in December, 1989. In addition no reference is made by Inspector MacAulay in his investigation to the evidence given by Doonan and Sullivan at the Comptroller General's inquiry held during the month of October, 1989. However now, finally, it's the police position these two persons should be interviewed.

THE ANALYSIS

Proposed Fraud Charge

Superintendent Fischer's letter initially deals with the proposed fraud charge. The R.C.M.P. argue that despite the findings of all three legal opinions that there is a proper fraud prosecution available (see page 2 paragraph 1) but they do not recommend "the laying of a fraud charge with significant theoretical constituent elements".

..../2

In my opinion the R.C.M.P. position is nonsense. I refer you to pages 20 and 21 of my opinion and would only comment to you that the law is extremely clear that you cannot deprive a person of property (the application for GO BC grant) if that person does not have a legal or equitable right to the property. Indeed in this case White Rock has simply reapplied for another GO BC grant.

Regional Crown Counsel Opinion

I will not attempt to justify my own opinion. It is entirely proper for the police to make critical comment about the conclusions that I have drawn and my interpretation of the law. I do however have the following comments to make:

1. the letter at page 2, paragraph 2 indicates that my analysis "fails to consider the purpose for including this provision (Section 122) in the Canadian Criminal Law. This comment is inaccurate. I refer you to page 23 of my report through page 29 where, in my view, I have given the most exhaustive examination of Section 122 of the Code available. I have examined evéry case recorded in Canadian or English jurisprudence including those mentioned by the R.C.M.P. I invite you to read that portion of my opinion.

2. I disagree strenuously with the R.C.M.P. letter at page 2 where they suggest that Section 122 exists to suggest that any significant departure from the high standard of conduct on elected officials is subject to criminal sanctions. This clearly is a misunderstanding of the law in relation to breach of trust. This is the view shared by myself, Ace Henderson, John Hall and Rick Peck although apparently not the R.C.M.P. If the R.C.M.P. are correct in this suggestion then every decision by a politician relating to an issue of political patronage or pork barrelling becomes a criminal offence. If Parliament had intended that to the case they would have specifically covered those areas in the Criminal Code.

3. At the bottom of page 2 my opinion is criticized for an "erroneous interpretation of the facts". My opinion is accurate not erroneous. Reid has testified under oath, as have White Rock officials they knew of the relationship between Doonan, Sullivan and Reid. Indeed members of the Board of Directors of the Semiahmoo House Society also worked for Reid during the election campaign. To suggest that these relationships were unknown is also nonsense. I have included in my opinion the fact that Reid did not reveal his friendship with Doonan and Sullivan to his staff and have indicated that this was improper. I do not believe I have overlooked any significant issue on this relationship.

..../3

4. The final criticism of my opinion suggests that I have searched for personal benefit flowing to Reid and upon finding none have decided that no breach of trust exists. This analysis is inaccurate. Both Rick Peck and I agree that the key issue in this case is the appearance of deceit. I refer you to the second full paragraph on page 31 of my opinion and the second full paragraph of Rick Peck's opinion at page 21. Rick Peck and I reach different conclusions on whether we would be able to prove the issue of deceit beyond a reasonable doubt but we are in total agreement on the legal areas of emphasis that seem to escape the R.C.M.P.'s analysis.

Richard Peck's Opinion

The R.C.M.P. obviously prefer Mr. Peck's opinion. They indicate they are in substantive agreement with Mr. Peck's analysis of Regina v. Cyr and indicate that they are in complete agreement with the principals in Cyr as a correct statement of the law. I point out to you the need to examine the full transcript of Cyr not rely on the English only headnote and refer you to page 27 of my opinion that sets out the eight categories involved in the "motion for a non-suit" in that case.

Mr. Hall's Opinion

The R.C.M.P. of course do not like Mr. Hall's opinion. They criticize Mr. Hall's conclusions for not dealing with a number of issues including the $50,000. research and development component of the grant. However it must be remembered that Mr. Hall had the benefit of reading both my opinion and Rick Peck's opinion and obviously was aware of all the facts. Mr. Hall was also under a "short time fuse" in the preparation of his report and what we were concerned with was his bottom line not with his in depth analysis and repeating the full statement of the law or the facts that were more than adequately set out by myself and Rick Peck.

Mr. Hall was more concerned about the possibility of prosecuting Doonan and Sullivan and this alarms the R.C.M.P. at pages 5 and 6 where they indicate that Mr. Hall does not properly understand Section 21 of the Criminal Code. I leave that criticism to stand on its own merits.

..../4

The Tests Utilized

Finally we come to the crux of this issue. You can readily see Inspector MacAulay's philosophies inherent under this section. The issues in this case, in my view, have nothing to do with whether or not we should prosecute Bill Reid and everything to do with Inspector MacAulay's concern over the power of the Attorney General to institute the charge approval process.

The R.C.M.P. write at page 7 ..."if the interpretation of the substantial likelihood aspects of the test result in an elevation of the standard to the point that it effectively amounts to virtual certainty of conviction before prosecution will ensue, the impression of administrative usurping of proper judicial determination of the issues in question is created. In my view, this is totally improper and flies squarely in the face of the public interest we all want to ensure is preserved..."

The R.C.M.P. then continue their concerns by drawing the analogy to the Walter Davidson case where, particularly Inspector MacAulay, is dissatisfied that Mr. Davidson was not removed from the legislature and indeed was allowed to remain. I understand he has had serious disagreements with Mr. Hughes on this issue and, in my view, this has coloured his judgment.

Summary

This issue was first publicly canvassed on September 20, 1989, when the Vancouver Sun published a story on the GO BC grant paid to the Semiahmoo Society. Mr. Reid resigned on September 22, 1989. The Comptroller General was requested to review the making of the grant to the Society on September 26, 1989. This matter would have come to the attention of the R.C.M.P. at or about the same moment.

The R.C.M.P. have chosen to rely upon a four page synopsis of the facts in this case provided with the court brief. In addition they have indicated, in the court brief, that both Doonan and Sullivan should be co-accused. The R.C.M.P. have chosen not to cross reference any of the materials to our office with the transcripts of the Comptroller General's Inquiry.

Considerable time was spent by our office, Mr. Peck's office and Mr. Hall's office in doing this cross referencing. The police would prefer that we close a blind eye to the explanations given by Doonan, Sullivan and Reid and prosecute on the basis that we have before us a prima facie case. All counsel agree that there

..../5

is a prima facie case present. However when we apply the same standard charge approval techniques that are used day in and day out in this province we are required to examine the "other side of the story". This is not a case where we do not have explanations given by the potential accused. Indeed we have all potential (CROSS EXAMINED) √ accused several times under oath by one of British Columbia's foremost ~~cross examiner'~~s trial counsel Ace Henderson.

After examining all of these transcripts both myself and Mr. Hall have reached the conclusion that there is no substantial likelihood of conviction. Mr. Peck has reached the opposite conclusion but makes it very clear that he found the decision a most difficult one and urges us to obtain another independent review from outside legal counsel. If Mr. Reid was a municipal official we would not proceed with this prosecution. It is solely because he is a Provincial Cabinet Minister that these concerns have arisen. That, in my view, is not the reason the Criminal Justice Branch exists.

All counsel agree that Section 122 of the Criminal Code requires the Crown to prove the issue of mens rea beyond a reasonable doubt. The only evidence here is that Reid directed work to his two friends by the use of the Semiahmoo House Society. There is no evidence to suggest that Sullivan and Doonan could not have produced what was asked of them and there is no evidence to suggest that Reid was dishonest or fraudulent in any of the steps he took in dealing with the officials of White Rock.

Finally, I wish to make it clear that none of the three legal opinions deal with the issue of whether it would be in the public interest to proceed with this prosecution. This fact has been criticized by Superintendent Fischer in his letter. This illustrates a lack of understanding of the charge approval process. The test of whether it is in the public interest to prosecute would only be a matter of concern if the decision had been reached that there was a substantial likelihood of conviction. Only Mr. Peck comes to this conclusion. Mr. Peck makes it clear he also believes that on the issue of public interest a second legal opinion is required. Both Mr. Hall and myself have indicated that, in our opinion, these facts do not give rise to a substantial likelihood of conviction therefore we need not turn our minds to the second test.

I believe the R.C.M.P. have misunderstood this issue but it is also possible they were merely looking for an opportunity to raise the Walter Davidson issue.

..../6

In summary I urge considerable caution to you in accepting the overly simplistic legal views set out in the letter from the R.C.M.P. It is quite clear that they do not have a sophisticated view of the law surrounding Section 122 and they are attempting to over simplify an area of the law that is complexed and an area that does not have great volumes of reasoned judgment. We should not be embarking on a prosecution in order to tidy up the law on Section 122.

I trust the above is of assistance you.

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

Province of British Columbia
Ministry of Attorney General
REGIONAL CROWN COUNSEL

MEMORANDUM

307, 815 Hornby Street, Vancouver, British Columbia V6Z 2E6 Telephone: (604) 660-4100 Facsimile: (604) 660-4198

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 13
DATE: May 4, 1990
KRH

February 12, 1990

CONFIDENTIAL

BY FAX

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

Re: William Earl Reid

Following your instructions I have reviewed the letter of February 7, 1990 from Superintendent R. G. Fischer which concerns an analysis of the legal opinions obtained in the above noted case.

Let me begin the analysis by pointing out the bottom line. Superintendent Fischer is not recommending that Reid be prosecuted at this stage. He is instead suggesting that the police interview Doonan and Sullivan in an attempt to strengthen the case against Reid. I point this out for a number of reasons the least of which is this may be a "out" for Mr. Hughes. If further investigation were to reveal more evidence then of course this matter could be reconsidered. I do point out to you however, that this investigation of Inspector MacAulay left much to be desired. Doonan and Sullivan were not interviewed by the police and indeed no reference is made of their "side of the story" in the court brief submitted to our office in December, 1989. In addition no reference is made by Inspector MacAulay in his investigation to the evidence given by Doonan and Sullivan at the Comptroller General's inquiry held during the month of October, 1989. However now, finally, it's the police position these two persons should be interviewed.

THE ANALYSIS

Proposed Fraud Charge

Superintendent Fischer's letter initially deals with the proposed fraud charge. The R.C.M.P. argue that despite the findings of all three legal opinions that there is a proper fraud prosecution available (see page 2 paragraph 1) but they do not recommend "the laying of a fraud charge with significant theoretical constituent elements".

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In my opinion the R.C.M.P. position is nonsense. I refer you to pages 20 and 21 of my opinion and would only comment to you that the law is extremely clear that you cannot deprive a person of property (the application for GO BC grant) if that person does not have a legal or equitable right to the property. Indeed in this case White Rock has simply reapplied for another GO BC grant.

Regional Crown Counsel Opinion

I will not attempt to justify my own opinion. It is entirely proper for the police to make critical comment about the conclusions that I have drawn and my interpretation of the law. I do however have the following comments to make:

1. the letter at page 2, paragraph 2 indicates that my analysis "fails to consider the purpose for including this provision (Section 122) in the Canadian Criminal Law. This comment is inaccurate. I refer you to page 23 of my report through page 29 where, in my view, I have given the most exhaustive examination of Section 122 of the Code available. I have examined every case recorded in Canadian or English jurisprudence including those mentioned by the R.C.M.P. I invite you to read that portion of my opinion.

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is a prima facie case present. However when we apply the same standard charge approval techniques that are used day in and day out in this province we are required to examine the "other side of the story". This is not a case where we do not have explanations given by the potential accused. Indeed we have all potential accused cross examined several times under oath by one of British Columbia's foremost trial counsel Ace Henderson.

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I trust the above is of assistance you.

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT #. 19
DATE: May 4 1990
KDG

Attached is Part 2.2 (pgs. 45 to 52 of Vol. 6 of the Marshall Royal Commission Report). In particular attention is directed to Recommendation 10 on p. 49.

The correct legal position is that the police have a right, in common with all citizens, to commence criminal proceedings and a duty to do so where they feel there are reasonable grounds and a charge should proceed.

In serious or sensitive cases, or indeed under a system like British Columbia's "quality control" for screening of charges, advice will be sought by police from Crown Counsel.

If the police disagree with that advice they may proceed with a charge in any event, mindful that the Attorney General may then publicly decline to prosecute by staying or withdrawing the charge.

This division of duty and responsibility is regarded as an essential check and balance on undue exercise of authority by both the police and the Crown.

This arrangement permits public scrutiny of the essentially unfettered authority to initiate criminal proceedings and of the similarly unfettered prosecutorial discretion of the Attorney General.

Province of
British Columbia

Ministry of
Attorney General

Regional Crown Counsel
307 815 Hornby Street
Vancouver
British Columbia Canada
V6Z 2E6
Telephone (604) 660-4100
Facsimile (604) 660-4198

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 20
DATE: May 4, 1990

February 20, 1990

BY FAX

Mr. Richard C. C. Peck, Q.C.
Robertson, Peck, Thompson
Barristers and Solicitors
1811 - 808 Nelson Street
Vancouver, British Columbia
V6Z 2H2

Dear Mr. Peck:

Re: William Earl Reid, et al

Attached please find a new statement obtained Monday, February 19, 1990 from Peter Martin, Executive Director of the Go BC Program.

I require your opinion on whether the information contained in the statement affects, in any way, your legal opinion earlier provided on whether William Reid, et al should face criminal charges for breach of trust.

I specifically refer you to Mr. Peck's opinion on January 8, 1990 at pages 19 through 21. It may well be that Martin's acknowledgement of his suggestion of the use of a non-profit society and his suggestion that the $50,000.00 could be included as a start up cost in the recycling application removes the element of deceit on this very important issue.

I would appreciate your brief response in writing as soon as possible and no later than Thursday afternoon of this week.

My sincere thanks to you for your prompt consideration of this new material.

Yours truly,

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

Enclosure

Province of
British Columbia

Ministry of
Attorney General

Regional Crown Counsel
307 815 Hornby Street
Vancouver
British Columbia Canada
V6Z 2E6
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DISCRETION TO
PROSECUTE INQUIRY

EXHIBIT # 21

DATE: May 4, 1990

February 20, 1990

BY FAX

Mr. John E. Hall, Q.C.
DuMoulin, Black
Barristers and Solicitors
1000 - 595 Howe Street
Vancouver, British Columbia
V6C 2T5

Dear Mr. Hall:

Re: William Earl Reid, et al

Attached please find a new statement obtained Monday, February 19, 1990 from Peter Martin, Executive Director of the Go BC Program.

I require your opinion on whether the information contained in the statement affects, in any way, your legal opinion earlier provided on whether William Reid, et al should face criminal charges for breach of trust.

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I would appreciate your brief response in writing as soon as possible and no later than Thursday afternoon of this week.

My sincere thanks to you for your prompt consideration of this new material.

Yours truly,

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

Enclosure

DISCRETION TO
PROSECUTE INQUIRY

EXHIBIT # 22

May 4 [illegible]

KDH

Supplementary Statement of Peter Temple MARTIN:
Executive Director of Public Programs, Ministry of Provincial Secretar
Office Address: Second Floor, 1117 Wharf Street, Victoria, [illegible] V8W 2
Telephone: (604) 387-4304
FAX: 387-1151

Province of
British Columbia

Ministry of
Attorney General
REGIONAL CROWN COUNSEL

MEMORANDUM

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DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 23
DATE: May 4, 1990
KDH

February 21, 1990

BY FAX

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

Re: William Earl Reid, et al
Additional Statement from Peter Martin

I enclose herewith, for your information, a copy of the statement by Peter Martin, Executive Director Public Programs which Inspector MacAulay delivered by my office.

I would be pleased to provide further information on the enclosed should you require.

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

Enclosure

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 24
DATE: May 4, 1990
RDH

ROBERTSON, PECK, THOMPSON

Barristers & Solicitors

TERRENCE L. ROBERTSON, Q.C. **RICHARD C.C. PECK, Q.C.*** **BRUCE A. THOMPSON**
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File No.:

Reply to: Richard C. C. Peck, Q.C.

DELIVERED BY HAND

February 21, 1990

Robert H. Wright, Q.C.
Regional Crown Counsel
307 - 815 Hornby Street
Vancouver, B. C.
V6Z 2E6

Dear Sir:

re: REID

I have in hand your fax of February 20th and I will respond forthwith. In the meantime I am enclosing a copy of the Ontario Court of Appeal decision in the *Starr* case and wish to draw your attention in particular to the comments at pages 2 and 3 of the Judgment. These comments are the sentiments of the Premier in directing that the inquiry take place.

Yours truly,

ROBERTSON, PECK, THOMPSON

Richard C. C. Peck, Q.C.

RCCP:sa
enclosure

** Unedited **

Indexed as:
*Starr*v. Ontario (Commissioner)

IN THE MATTER OF an Inquiry into the Relationship between
Certain Individuals and Corporations and Elected and
Unelected Public Officials

Between
Patricia*Starr,*Tridel Corporation Inc., Mario Giampetri,
and Gordon Ashworth, Appellants, and
The Honourable Mr. Justice Lloyd W.*Houlden,*Commissioner,
Respondent

Ontario Judgments: [1990] O.J. No. 29
Action No. 739/89

Ontario Supreme Court - Court of Appeal
Toronto, Ontario
Howland C.J.O., Morden, Goodman, Grange and Tarnopolsky JJ.A.
Heard: December 11 and 12, 1989

Judgment: January 12, 1990

[Ed. note: Corrigendum, released January 22, 1990, appended and corrections made to judgment.]

E.A. Cherniak, Q.C., and M.A. Sanderson, for the Appellant Tridel Corporation Inc.
A.M. Cooper, Q.C., and P.C. West, for the Appellant Patricia *Starr.*
Alan D. Gold, for the Appellant Mario Giampetri.
G.S. Brannan and W.A. Apps, for the Appellant Gordon Ashworth.
J.W. Brown, Q.C., and C. Reeve, for the Respondent Commissioner.
D.R. O'Connor, Q.C., and F.J. Kristjanson, for the Government of Ontario.

The following judgment was delivered

BY THE COURT:-- A Commission, under the Honourable Mr. Justice Lloyd*Houlden,*was established by Order in Council dated July 6, 1989 to inquire into the relationship between certain individuals and corporations and elected and unelected public officials. The Commissioner commenced hearings on September 18, 1989. On the first day of the hearing, the constitutionality of the Commission was challenged and the Commissioner was asked to state a case for consideration by the Divisional Court. The Commissioner declined and the applicants then applied under s. 6(2) of the Public Inquiries Act, R.S.O. 1980, c. 411, to require him to do so. The Divisional Court dealt with the matter not only as an application to require a case to be stated but also upon the merits of the stated case which was sought, assuming it to be before them. The Divisional Court then dismissed the application and an appeal from that order, with leave of this court, is now before us. Like the Divisional Court, we not only have heard the application but have considered the merits of the case proposed to be stated.

Some background is necessary to understand the problems raised before the Divisional Court and on this appeal. The appellant Patricia*Starr*was the President or Chairman of the Board of the Toronto section of the National Council of Jewish Women. Newspaper articles had accused her of making contributions out of the coffers of the charity to certain politicians, and had printed reports of her association and that of the charity with the appellant Tridel Corporation Inc., a real estate development corporation. During the time of the publication of these articles it was alleged that the appellant, Gordon Ashworth, an assistant to the Premier of Ontario, had received a refrigerator and some painting work had been done on his house, all at no cost to himself. This latter incident prompted the assistant to resign and the Premier to establish this Inquiry. In so doing, the Premier made a statement, containing the following:

> I have today ordered a judicial inquiry into the facts surrounding the relationships between Patricia*Starr,*any person or corporation she may have acted for -- including Tridel, and any elected and appointed officials, including Gordon Ashworth.
>
> . . .
>
> The recent allegations are deeply disturbing and profoundly worrisome. I am very troubled by this situation and think that it is essential that there be an immediate and independent public inquiry to get to the bottom of it.
>
> I am determined that in the carrying out of this inquiry, that no stone be left unturned, that every lead be followed up on, that every allegation be thoroughly and exhaustively investigated until all of the facts have been laid bare before us.
>
> . . .
>
> Nothing is more important than the public trust. I will do everything in my power to ensure that it is protected.
>
> I believe very strongly that the democratic system depends on the public's trust and faith in the integrity of their public officials.

*

> People must be confident that public officials -- all public officials -- whether elected or appointed -- are people of integrity.
>
> They must be confident that their officials are operating in an honest, impartial and objective manner -- free of prejudice, free of bias, free of unwarranted partisanship.
>
> Most importantly, public officials must be open to public scrutiny, and in doing so must be found to be beyond reproach, and acting in accordance with the highest ethical standards.
>
> I am confident that this judicial inquiry will uncover those who have not functioned in this manner.
>
> I give you my personal assurance that those whose performance has been found wanting will be discovered, those who have erred will be punished, and those who have broken the law will be prosecuted.

The full Order in Council and proposed stated case are attached hereto as Schedules A and B respectively.

The argument of the appellants which gave us the most concern was one to the effect that the Order in Council required the Commissioner to inquire into crimes committed by named persons and thus make conclusions of law respecting criminal liability, something the Commissioner is forbidden to do by the Order in Council itself. Thus the Order in Council is self-defeating and the Commissioner cannot proceed upon it. We will deal with this submission later in these reasons but first we would answer the general proposition that the creation of the Commission is ultra vires the Provincial Legislature because of subject matter or because its operation will inevitably infringe upon Charter rights.

The appellants argued before the Divisional Court that this provincial inquiry is, in pith and substance, a criminal investigation and, as such, trenches upon the criminal law and procedure power of Parliament under s. 91(27) of the Constitution Act, 1867. The Divisional Court did not agree and neither do we. We agree with the Divisional Court when it asserted:

> ... The inquiry before us is in relation to a valid provincial matter namely the relationship between provincial government officials both elected and unelected and other named individuals and corporations; it relates to matters of undoubted provincial concern and competence, namely the conduct of provincial public officials and

> persons dealing with them and the integrity of those officials and the process of provincial government itself. In the language of s. 2 of the Act which is the authority for the inquiry, the subject-matter is "any matter
>
> connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof ...".

This is clearly a provincial power under head 4 of s. 92 of the Constitution Act, 1867 -- provincial offices and officers, as well as such heads as 13 -- property and civil rights, and 16 -- matters of a merely local or private nature in the province. The Inquiry might also concern such matters of provincial concern as head 7 -- management of charities. The focus of this inquiry concerns as well the "Executive Power" found in Part V -- "Provincial Constitutions", especially s. 63 concerning appointment of Executive Officers, which is now provided for by the Executive Council Act, R.S.O. 1980, c. 147.

The appellants argued, however, that we should look behind these ostensible purposes and find that this inquiry was really enacted for the colourable purpose of conducting a police investigation which would have the power to compel testimony leading to the laying of criminal charges. We do not agree that this is so. The Supreme Court of Canada has held that a province may equip a coroner with coercive investigating powers: R. v. Faber, [1976] 2 S.C.R. 9. In Di Iorio v. Warden

of Montreal Jail, [1978] 1 S.C.R. 152 the court held that a province could compel questioning of individuals suspected of participating in organized crime. In A-G of Quebec and Keable v. A-G of Canada et al., [1979] 1 S.C.R. 218, (Keable No. 1), the court upheld the validity of a Quebec inquiry, not just into the activities of the federal police force -- the R.C.M.P., but also into specific acts which could clearly lead to criminal charges and did. More recently yet, the court upheld the validity of a British Columbia inquiry into a specific incident to determine, inter alia, whether injuries of an individual were sustained in a police station and, if so, by whom they were caused: O'Hara v. British Columbia, [1987] 2 S.C.R. 591. The appellants have argued that the latter case is different from the one before us in that there was not an ongoing police investigation as, they allege, is occurring here. However, the fact that the inquiry could reveal facts upon which criminal charges could be laid did not stop the inquiry in O'Hara, any more than in Di Iorio or Keable No. 1. certainly the Keable inquiry was followed with criminal prosecutions.

As far as allegations of infringement of the Charter are concerned, we do not see any at this stage. As far as s. 7 is

concerned, the protection of "the principles of fundamental justice" is textually related to deprivation of "the right to life, liberty and security of the person": Re: B.C. Motor Vehicle Act, [1985] 2 S.C.R. 486 at 500 and 511-13. Here, as is the practice with inquiries, the commissioner reports and recommends; he does not order. As far as the Charter protections of non-compellability and of the presumption of innocence are concerned, they are both set out in s. 11 -- paragraphs (c) and (d) respectively -- and so are available to "any person charged with an offence", which is not the case with an inquiry, nor can it be. If criminal charges are laid, their protections can be claimed at the trial, as can the protection of s. 13 against self-incrimination. There is no question that the Charter applies to inquiries, but none of the allegations made before us involve a Charter infringement.

The more formidable problem revolves around the form of the Order in Council itself. The relevant portions of the terms of reference are as follows:

> AND THEREFORE, pursuant to the said Public Inquiries Act, R.S.O. 1980, Chapter 411, a Commission be issued appointing the Honourable Justice Lloyd W.*Houlden*who
>
> is, without expressing any conclusion of law regarding the civil or criminal responsibility of any individual or organization: [Emphasis added.]
>
> 1) to investigate:
>
> (i) the nature and extent of the dealings between Patricia*Starr*and elected and unelected public officials;
>
> (ii) the nature and extent of the dealings between Patricia*Starr*and private individuals, corporations, unincorporated bodies and charities in relation to elected and unelected public officials;
>
> (iii) the nature and extent of the dealings between Tridel Corporation; companies related to Tridel Corporation; representatives, officers, employees or officials of Tridel Corporation; representatives, officers, employees or officials of companies related to Tridel Corporation, and elected and unelected public officials;
>
> (iv) the nature and extent of the dealings between Tridel Corporation; companies related to Tridel Corporation; representatives, officers, employees or officials of Tridel Corporation; representatives, officers, employees or officials of companies related to Tridel Corporation and private individuals, corporations, unincorporated bodies and charities in

> relation to elected and unelected public officials.
>
> 2) to inquire into and report upon any such circumstances or dealings where, in the opinion of the Commissioner, there is sufficient evidence that a benefit, advantage or reward of any kind was conferred upon an elected or unelected public official or upon any member of the family of any elected or unelected public official, or where, in the opinion of the Commissioner, there is sufficient evidence that there was any agreement or attempt to confer a benefit, advantage or reward of any kind upon an elected or unelected public official or upon any member of the family of an elected or unelected public official. *
>
> AND THAT nothing set out above shall be taken as in any way limiting the right of the Commissioner to petition the Lieutenant Governor in Council to expand the terms of reference to cover any matter that he may deem necessary as a result of information coming to his attention during the course of the investigation or inquiry, ...

The latter part of para. 2) bears a striking resemblance to s. 121(1)(b) and (c) of the Criminal Code which are as follows:

> 121(1) Every one commits an offence who
>
> . . .
>
> (b) having dealings of any kind with the government, pays a commission or reward to or confers an advantage or benefit of any kind on an employee or official of the government with which he deals, or to any member of his family, or to any one for the benefit of the employee or official, with respect to those dealings, unless he has the consent in writing of the head of the branch of government with which he deals, the proof of which lies on him;
>
> (c) being an official or employee of the government,
>
> demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies on him; ....

In Re Nelles et al. and Grange et al. (1984), 46 O.R. (2d) 210, the Commissioner was required to investigate the mysterious deaths of certain babies in the Hospital for Sick Children at Toronto during a particular time frame and specifically to "inquire into and report on ... how and by what means [the children] came to their deaths". He was also limited by the same words as here, namely "without expressing any conclusion of law regarding civil or criminal responsibility". The Commissioner thought, and stated a case accordingly, that he was entitled and required (if the evidence justified it), if he found that a child died from an unnatural death brought about by the administration of an overdose of digoxin (a heart drug), to name the person administering the overdose. The Court of Appeal found he was not so entitled. As this court put it at

220 and 221:

> In our opinion, a finding that death was caused by the deliberate actions of a named person, being the administration of a toxic dose of digoxin, or that such actions were with deliberation or design, really amounts to a finding that such person acted with intention to cause death and so a conclusion of law as to civil or criminal responsibility. Further, it is a reasonable inference that a person intends the natural consequences of his acts and such a finding as that referred to against a nurse in this case would leave nothing further to be said to amount to a conclusion forbidden by the Order in Council.

By analogy to the dicta in Nelles, the appellants argue that as para. 2) of the terms of reference mandate an inquiry into circumstances that would disclose an offence under Criminal Code s. 121(1)(b) and as Patricia*Starr*and Tridel Corporation Inc. are already named, the expression of a conclusion of law regarding criminal responsibility cannot be avoided. Moreover, unlike Nelles, since it is only into dealings between*Starr*or Tridel and public officials that the Commissioner may inquire, his hand must be stayed from any inquiry whatever.

There are several answers to the argument. The first is the one expressed by the Commisioner and accepted by the Divisional Court, namely, that to attempt to assess the conclusion in advance of the evidence is premature. The evidence may disclose no offence or, if it does, it may not disclose one by a named person or it may not disclose all the elements of an offence. The Commissioner is very much aware of the problem -- he sat on the Nelles case -- and has expressed his determination many times not to permit the proceedings to develop into anything akin to a criminal trial. In Nelles, the Commissioner had expressed his intention to "name names" (if the evidence justified it) which in the opinion of the Court of Appeal would provide the link that would constitute a conclusion of law as to criminal responsibility. Here the Commissioner has expressed his determination to avoid any such conclusion. In our opinion, he should be permitted to proceed.

There is, however, another, perhaps more important, distinction. When we examine the terms of reference carefully, particularly para. 2) thereof, we find one very important element of the offence defined in Criminal Code s. 121(1)(b) missing. That paragraph is repeated here for convenience:

> (b) having dealings of any kind with the government, pays a commission or reward to or confers an advantage or benefit of any kind on an employee or official of the government with which he deals, or to any member of his family, or to any one for the benefit of the employee or official, with respect to those dealings, unless he has the consent in writing of the head of the branch of government with which he deals, the proof of which lies on him; .... [Emphasis added.]

Nowhere in term 2) of the terms of reference is there mention of the relationship between the "benefit, advantage or reward" and the "dealings" between the parties. The importance of the link in establishing criminal responsibility was demonstrated in R. v. Cooper (1977), 34 C.C.C. (2d) 18 (S.C.C.). It follows that the Commissioner could find dealings and a reward involving a named person or corporation and still not find facts expressing a conclusion of criminal responsibility. If we examine s. 121(1)(c) we will see that, with regard to the actions of public officials who demand or accept a reward, there is no need to establish the link between the government dealings and the parties to the advantage to constitute the crime, but the terms of reference of the Order in Council do not identify those officials by name. A finding of the acceptance of a reward by an unnamed official cannot, of course, constitute an expression of a "conclusion of law regarding the ... criminal responsibility of any individual ..."

The task for the Commissioner in pursuing his mandate and not overstepping the limitations upon his findings will not be an easy one. As the Divisional Court put it at pp. 14-15:

> While recognizing that the Commissioner may find difficulty in complying with the prohibition against drawing conclusions as to responsibility, criminal or civil, we do not at present see the task as impossible. To attempt to assess that factor without any evidence upon which the Commission may report, is in our opinion premature.

In Nelles, the court was equally concerned about the difficulty. At p. 221 it stated:

> It was probably inherent in the terms of the Order in Council that the task of meeting the "need of the parents and the public as a whole to be informed of all available

> evidence" by "full examination" of the matters to be inquired into and "to ensure full public knowledge of the completeness of the matters referred to", but to do so "without expressing any conclusion of law regarding civil or criminal responsibility", was one of extreme difficulty, at times approaching the impossible.

The court then ended with a warning to the Commissioner:

> Where such an impasse arises it should be resolved, in our opinion, by a course that best protects the civil rights of the persons the limitation was designed to protect.

This Commissioner has stated he is well aware of this warning.

There is one other matter that we must consider. The appellants have argued that on the wording of the terms of reference the Commissioner must proceed by way of a twostep process. He is, first, to investigate to determine whether there is sufficient evidence to proceed to an inquiry and second, if he finds such evidence, to embark upon the inquiry itself. It is, therefore, suggested that the Commissioner

should in the first stage hear evidence in camera and should proceed to a public hearing only after he has found through the investigative process issues worthy of inquiry. Thus, the reputation of persons and their constitutional rights will not unnecessarily suffer through rumour, hearsay or innuendo with much attendant publicity.

It may be that the wording of the terms of reference permit the interpretation advanced by the appellants. Nevertheless we can only agree with the commissioner and the Divisional Court that the interpretation must be rejected. We cannot believe that so radical a departure from the ordinary conduct of commissions, involving private hearings and a private preliminary assessment of evidence, would be anything but subversive to the whole policy of the Act. Moreover, we agree with the Divisional Court that the result would be a loss of public confidence in the process. it is the role of commission counsel to marshall the evidence and bring it forward to public hearings where the Commissioner will assess it. The Act (s. 4) requires the hearings to be open to the public except in special circumstances. No doubt counsel will consult with the Commissioner from time to time as to the relevancy or cogency of particular evidence. The Commissioner has chosen his own

counsel and must be allowed to place confidence in him; otherwise the Commissioner's task would not only be difficult (which it assuredly is) but intolerable as well.

For these reasons, as well as those expressed by the Divisional Court, we would dismiss the appeal. There should be no order as to costs.

HOWLAND C.J.O.
MORDEN J.A.
GOODMAN J.A.
GRANGE J.A.
TARNOPOLSKY J.A.

* * * * *

Order in Council

Ontario
Executive Council

SCHEDULE A

On the recommendation of the undersigned, the Lieutenant Governor, by and withthe advise and concurrence of the Executive Council, orders that

WHEREAS by an Act entitled the Public Inquiries Act R.S.O. 1980, Chapter 411, it is enacted that whenever the Lieutenant Governor in Council considers it expedient to cause inquiry to be made concerning any matter that he declares to be of public concern and such inquiry is not regulated by any special law, he may, by commission appoint one or more persons to conduct such inquiry and may confer the power of summoning any person and requiring him or her to give evidence an oath and to produce such documents and things as the Commissioner or Commissioners deems requisite for the full investigation of the matters into which he or they are appointed to examine;

AND WHEREAS the Lieutenant Governor in Council considers it expedient to cause inquiry to be made into the matter hereinafter set out which he declares to be of public concern;

AND THEREFORE, pursuant to the said Public Inquiries Act, R.S.O. 1980, Chapter 411, a Commission be issued appointing the Nonourable Justice Lloyd W.*Houlden*who is, without expressing

any conclusion of law regarding the civil or criminal responsibility of any individual or organization:

1) to investigate:

(i) the nature and extent of the dealings between Patricia*Starr*and elected and unelected public officials;

(ii) the nature and extent of the dealings between Patricia*Starr*and private individuals, corporations, unincorporated bodies and charities in relation to elected and unelected public officials;

(iii) the nature and extent of the dealings between Tridel Corporation; companies related to Tridel Corporation; representatives, officers, employees or officials of Tridel Corporation; representatives, officers, employees or officials of companies related to Tridel Corporation, and elected and unelected public officials;

(iv) the nature and extent of the dealings between Tridel

Corporation; companies related to Tridel Corporation; representatives, officers, employees or officials of Tridel Corporation; representatives, officers, employees or officials of companies related to Tridel Corporation and private individuals, corporations, unincorporated bodies and charities in relation to elected and unelected public officials.

2) to inquire into and report upon any such circumstances or dealings where, in the opinion of the Commissioner, there is sufficient evidence that a benefit, advantage or reward of any kind was conferred upon an elected or unelected public official or upon any member of the family of any elected or unelected public official, or where, in the opinion of the Commissioner, there is sufficient evidence that there was any agreement or attempt to confer a benefit, advantage or reward of any kind upon an elected or unelected public official or upon any member of the family of an elected or unelected public official.

AND THAT nothing set out above shall be taken as in any way limiting the right of the Commissioner to petition the Lieutenant Governor in Council to expand the terms of reference

to cover any matter that he may deem necessary as a result of information coming to his attention during the course of the investigation or inquiry,

AND THAT all Government Ministries, Boards, Agencies and Commissions shall assist the Commissioner to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage ouch counsel, investigators and other staff as he deems it proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet in order that a complete and comprehensive report may be prepared and submitted to the Government,

AND THAT the Ministry of the Attorney General will be responsible for providing administrative support to the Inquiry,

AND THAT Part III of the said Public Inquiries Act be declared to apply to the aforementioned Inquiry.

Recommended ______________ Concurred ______________
Attorney General Chairman

Approved July 6, 1989
and Ordered ______________ ______________
Date Lieutenant Governor

SCHEDULE B

1. Do the Terms of Reference of the Inquiry violate the principles enunciated in the decision of the ontario Court of Appeal in Re Nelles and Grange. (1984), 46 O.R. (2d) 210?

2. (a) Are the appointment of the Commissioner and the Terms of Reference of the Commission of Inquiry constitutional and intra vires the Province of Ontario, and can such an Inquiry be conducted without affecting the Charter rights of persons affected thereby?

(b) Is the Commissioner entitled to embark on the Investigation and Inquiry before the criminal investigation and process in respect of the matters referred to in the Terms of Reference are completed?

3. Do the Terms of Reference require the Commissioner, prior to commencing the Inquiry, to conduct an investigation in private

into the nature and extent of the dealings between the persons named therein and elected and unelected public officials and to come to a conclusion as to the instance or instances in which there is sufficient evidence of benefits, advantages or rewards conferred to warrant the holding of an inquiry and the preparation of a report?

If the Terms of Reference do so require:

(a) Must a specific statement of all such matters proposed to enquire into be made before the Inquiry and Report Stage begins?

(b) Should the Commissioner entertain submissions from affected persons before coming to any conclusion about whether any or particular matters should proceed from the investigation to the inquiry stage? Should the Commissioner require that affected persons be given copies of the investigation materials affecting them relating to the delineated issues to be enquired into and reported upon?

* * * * *

Corrigendum

Released: January 22, 1990

Page 3 -- "it was revealed" changed to "it was alleged" and "all with the courtesy and at the cost of a Tridel-related company" changed to "all at no cost to himself."

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13I DON'T UNDERSTAND.
PLEASE TYPE R TO SEE THE NEXT RANKED DOCUMENT OR TYPE S TO PERFORM A NEW SEARCH

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DISCRETION TO
PROSECUTE INQUIRY.
EXHIBIT # 25
DATE: May 4, 1990

February 21, 1990

BY FAX

Mr. Richard C. C. Peck, Q.C.
Robertson, Peck, Thompson
Barristers and Solicitors
1811 - 808 Nelson Street
Vancouver, British Columbia
V6Z 2H2

Dear Mr. Peck:

Re: William Reid et al

I have for acknowledgement your hand delivered letter of February 20, 1990, which includes a copy of the Court of Appeal decision in the Starr case.

I have examined with interest the comments of the Premier of Ontario which are reflected at pages 2 and 3 as you have suggested.

I take those comments to be accurate. I take them to mean that it is appropriate that a full public inquiry be held in order to assure the public that the highest ethical standards have been followed by public officials. I did not take that section you have referred me to to amount a definition of prosecution under Section 122. It would appear that there are various stages to be considered in the Premier's comments I refer you to the final paragraph attributed to him at page 3 where he states, "I give you my personal assurance that those whose performance has been found wanting will be discovered, those who have erred will be punished, and those who have broken the law will be prosecuted." In British Columbia an inquiry has taken place for the very reason set forth by the Premier of Ontario. The decision on whether or not someone will be prosecuted is of course an entirely separate and distinct issue outside the reasons for calling an inquiry.

Yours truly,

per Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 26
DATE: May 4, 1990
KRA

ROBERTSON, PECK, THOMPSON

Barristers & Solicitors

TERRENCE L. ROBERTSON, Q.C. RICHARD C.C. PECK, Q.C.* BRUCE A. THOMPSON
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File No.:

Reply to: Richard C. C. Peck, Q.C.

DELIVERED BY HAND

February 22, 1990

Robert H. Wright, Q.C.
Regional Crown Counsel
307 - 815 Hornby Street
Vancouver, B. C.
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Dear Sir:

re: William Earl REID et al

"It's a poor sort of memory that only works backwards," the Queen remarked.

- from Through the Looking Glass by Lewis Carroll

The above quotation amply sums up my opinion of Mr. Martin's ever increasing precision of memory with respect to this matter. I do not find his new statement compelling nor does it change my mind on this matter. Martin is a cross-examiner's dream and I have grave concerns about the veracity of this most recent statement.

Quite apart from that I note that he speaks of a "premium price" but does not have any recollection of conversation about "a specific item such as a mold." Accordingly I am unsure as to whether by referring to the phrase "a premium price" Martin is making reference to the idea that he would be prepared to see a larger per cost price paid in order to ensure that the benefit went to a British Columbia company or whether he endorses the concept of paying the company for the purchase of a mold which would represent the company's primary capital asset. Moreover, I am concerned that the specific amount and what it was designated for was not discussed between Reid and Martin. This tends to the inference that Reid was careful not to disclose the amount of $50,000 being designated for a mold because he intended it to be a hidden cost. At least that is one inference open to be drawn by a trier of fact.

In short, Martin's most recent statement does not assist me although it is clear that if he did testify on behalf of Reid and was believed one element of what I consider to be Reid's deceitful conduct in this case would be negated. Having said this I reiterate that I am astonished at Martin's increasing lucidity of recollection.

Yours truly,

ROBERTSON, PECK, THOMPSON

Richard C. C. Peck, Q.C.

RCCP:sa

DuMOULIN BLACK

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FILE NO 86-25

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 27
DATE: May 4, 1990
KRH

February 22, 1990

Regional Crown Counsel
307 - 815 Hornby Street
Vancouver, B.C.
V6Z 2E6

Attention: Robert H. Wright, Q.C.

Dear Sirs,

RE: Eco-Clean Waste Systems Ltd.

In response to yours of February 20, 1990, I have reviewed the additional statement of Peter T. Martin. In my original analysis I was aware of the fact that Martin had some role to play in the inclusion of the $50,000.00 in the global amount of the grant. That to me was a factor that would have made the prosecution of the Minister less likely of success because he could say that he did not originate the concept. This statement is simply more specific on the subject.

As I think I expressed earlier, the case, while near the line, does not seem to me to have that strength that would lead me to conclude that it could be successfully prosecuted. In other words, I would not go into this case with the feeling of confidence that I would like to have when I am doing a prosecution. Each case is so dependent on its own facts, that it is difficult to identify every particular that may lead to a decision for or against prosecution, but in the end if often comes down to a feeling or impression based on many years of experience in the Courts, and in this case, after analysis and reflection, I was not of the view that I would feel comfortable prosecuting the individuals who were investigated. Accordingly, I recommended against prosecution and that remains my view today.

Yours truly,

DuMOULIN BLACK
PER:

JOHN E. HALL
JEH/lg

British Columbia **Attorney General**

OFFICE OF THE
DEPUTY ATTORNEY GENERAL

Harbour Square
910 Government Street
Victoria
British Columbia
V8V 1X4
(604) 387-5211

OUR FILE
YOUR FILE

COPY

23 February 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 28
DATE: May 4, 1990
KDH

Deputy Commissioner D.K. Wilson
Commanding Officer
"E" Division
Royal Canadian Mounted Police
657 West 37th Avenue
Vancouver, B.C.
V5Z 1K6

Dear Deputy Commissioner Wilson:

Re: William Earl Reid

In your letter of February 7, 1990, you expressed the view that the matter whether a charge should go forward against William Earl Reid pertaining to breach of trust by an official under S. 122 of the Criminal Code is deserving of further consideration by this Ministry. Any other possible charges and any other possible accused persons have been resolved in the negative by our respective staff members. You suggest that further consideration take place within the context of Doonan and Sullivan being possible Crown witnesses in a charge against Reid.

I welcome your request for further consideration following a study by you of Mr. Stewart's letter of January 30, 1990, and the attachments enclosed with it. Your request fits precisely within the recommended procedure that should be available in instances such as this as set forth in recommendation number 61 of the Justice Reform Committee. That recommendation has been accepted as policy within the Criminal Justice Branch of the Ministry.

The reconsideration you requested has been an active and intense exercise over the past two weeks. You are aware that I brought together in an advisory capacity the authors of the three opinions to which you refer as well as Mr. Stewart, the Assistant Deputy Attorney General, Criminal Justice and Mr. A.G. Henderson who became knowledgeable about this matter in his capacity as counsel to the Comptroller General's enquiry. Growing out of that meeting were subsequent meetings between Regional Crown Counsel Wright and Inspector Macaulay. The Inspector conducted a follow-up interview with a key member of the staff of the

Ministry of the Provincial Secretary holding duties with respect to public programs in that Ministry. I have had a further and final meeting with the senior advisory Ministry staff.

That Mr. Reid's conduct in this matter was inappropriate and failed to meet the level of performance to be expected from one in his position, there is no doubt. I have concluded however that the essential elements to engage the criminal law process are not present.

In establishing the Starr Commission of Inquiry in Ontario the Premier of that province said:

> "I believe very strongly that the democratic system depends on the public's trust and faith in the integrity of their public officials.
>
> People must be confident that public officials-all public officials-whether elected or appointed-are people of integrity.
>
> They must be confident that their officials are operating in an honest, impartial and objective manner-free of prejudice, free of bias, free of unwarranted partisanship.
>
> Most importantly, public officials must be opened to public scrutiny, and in doing so must be found to be beyond reproach, and acting in accordance with the highest ethical standards".

Those are standards that the people of British Columbia are entitled to have respected by their elected and appointed officials. The perception at least that Mr. Reid acted in violation of some of those standards is certainly present. His objectivity must be open to question and no reasonable person examining the facts could conclude that he performed throughout with the highest ethical standards. Those observations are not however conclusive that a criminal offence has been committed.

As you know the Crown applies a two fold test in deciding matters of this kind. The first is substantial likelihood of conviction and the second is that a prosecution be in the public interest. If the first test is met, certainly the second one would be.

Giving great weight and consideration to the unanimous view of my senior advisors within government and the majority opinion of the senior experienced counsel engaged from the outside bar, I have concluded that the first test has not been met. Dishonesty, deceit and corruption are in this instance speculative at best and the inappropriate and unacceptable process and procedure followed by Reid cannot be used to substitute for dishonest, deceitful or corrupt conduct. On balance I am not satisfied of the existence of a substantial likelihood of conviction and therefore I decline to engage the criminal law process against Reid.

In the officer's report to you of February 5, 1990, it was recommended that Doonan and Sullivan be interviewed as witnesses to strengthen the case against Reid. I understand that Inspector Macaulay and Wright have subsequently discussed this issue. It was agreed that it was not necessary to conduct those interviews in light of their previously recorded positions taken under oath and which have been available. Further Doonan and Sullivan's close connection to Reid is an indication of what could be expected from the approach they would take on the stand.

I attach a copy of a letter received from John Hall, Q.C., one of those counsel who has been consulted throughout on this matter. While the first paragraph has reference to the outcome of the re-interviewing process earlier in the week, I do want to say with respect to the second paragraph that it capsulizes in a most adequate way the essence of what I have endeavoured to convey to you in this communication.

I suggest to you that there may be benefit to all of us involved in the criminal justice system to meet and to discuss the broader concepts of the tests utilized by Crown Counsel in this province in determining whether or not to approve the laying of criminal charges. I believe that there would be benefit in a meeting between the legal advisors that I have utilized to assist me in this case and senior members of the police community to discuss the broader philosophical concepts of our respective roles in charge approval. I would be pleased to discuss this matter with you at any time.

On the second page of your letter you refer to the release to the media of Mr. Stewart's decision and communication on this matter. I wish at this time to emphasize as I did to you over the telephone immediately upon receipt of your letter that no such release originated with this Ministry of government.

I wish to express my thanks to you for taking the time to consider this matter as carefully as you have done and for referring it to me for re-examination. I believe that this process, in instances of this kind, is a useful one and could in other similar instances, be utilized as the circumstances may warrant.

Yours truly,

E. N. Hughes
Deputy Attorney General

Enh/sor
Encl

copy: Bill Stewart

DuMOULIN BLACK

BARRISTERS & SOLICITORS

MICHAEL L DuMOULIN
W DAVID BLACK
GEORGE R. BRAZIER
JOHN E HALL, Q.C.
SARGENT H BERNER
BRIAN C. IRWIN
KENNETH W BALL
CHERI L. NATAROS
COREY H. DEAN
KENNETH L. M. EMBREE

10TH FLOOR, 595 HOWE STREET
VANCOUVER, CANADA
V6C 2T8

TELEPHONE (604) 687-1824
TELECOPIER NO. (604) 687-8772

FILE NO. 86-25

February 22, 1990

Regional Crown Counsel
307 - 815 Hornby Street
Vancouver, B.C.
V6Z 2E6

Attention: Robert H. Wright, Q.C.

Dear Sirs,

RE: Eco-Clean Waste Systems Ltd.

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Yours truly,

DuMOULIN BLACK
PER:

JOHN E. HALL
JEH/jg

British Columbia
Attorney General

OFFICE OF THE
DEPUTY ATTORNEY GENERAL

arbour Square
Government Street
Victoria
British Columbia
V8V 1X4
(604) 387-5211

OUR FILE ....

YOUR FILE ....

23 February 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 28 A
DATE: May 22/90

Deputy Commissioner D.K. Wilson
Commanding Officer
"E" Division
Royal Canadian Mounted Police
657 West 37th Avenue
Vancouver, B.C.
V5Z 1K6

Dear Deputy Commissioner Wilson:

Re: William Earl Reid

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Yours truly,

E. N. Hughes
Deputy Attorney General

Enh/sor
Encl"

[illegible]

D.C ~~O.C.S.~~

As discussed with the D.M.&C., we will
accept the decision. I have phoned Insp.
McEnulty and conveyed the decision to him -
together with my statement that it is accepted
There will be no press or media comment
on the decision that has been made.

90.02.23

90.02.27

90.02.23

PROSECUTE INQUIRY
EXHIBIT # 29
DATE: May 4, 1990
KRH

DRAFT PRESS RELEASE

RE: WILLIAM REID ET AL

The Criminal Justice Branch of the Attorney General's Ministry has reviewed the circumstances surrounding the actions of the Honourable William Earl Reid in the allocation of a GO BC grant to the Semiahmoo House Society in June, 1989.

We have had the benefit of reviewing the full seven volumes of transcripts of the evidence taken under oath of witnesses in the inquiry held by the office of the Comptroller General. In addition we have reviewed the findings of the Special Report of Comptroller General.

The Commercial Crime Section of the Royal Canadian Mounted Police has conducted an investigation of the same circumstances that were the subject of the Comptroller General's Inquiry. Additional witness statements were obtained that added to and clarified the content of the witnesses evidence.

The R.C.M.P. recommended that Mr. Reid be charged with the criminal offence of breach of trust by a public officer pursuant to Section 122 of the Criminal Code of Canada.)

The Criminal Justice Branch has obtained legal opinions from both in house Crown Counsel and on an independent basis from lawyers outside the Branch to determine whether the evidence available would meet the standard criteria used by our office in determining whether or not to proceed with criminal charges.

The legal opinions provided to our office have convinced me that there should not be a criminal prosecution. The test utilized in this Province in all criminal matters is two fold: whether or not a case carries with it a substantial likelihood of conviction and secondly whether a prosecution would be in the public interest.

I am satisfied that if the evidence is available to satisfy the first test of a substantial likelihood of conviction then the public interest would indeed be met by a prosecution.

However, on the facts of this case it is my opinion that the evidence available does not satisfy our standing charging criteria. The conduct of Mr. Reid is described in the Comptroller General's report as both irregular and improper. The legal opinions obtained make it clear that the misconduct must be greater than that to involve the criminal law.

Considering the above factors, the Crown will not conduct a criminal prosecution of Mr. Reid concerning his actions in the allocation of a GO BC grant to the Semiahmoo House Society.

Royal Canadian Mounted Police | Gendarmerie royale du Canada

Commanding Officer | Commandant divisionnaire

Your file Votre référence

89-09-25

Our file Notre référence

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 30
DATE: May 22, 19

OIC CRIMINAL OPERATIONS, "E" DIVISION

Re: Mr. Bill REID, M.L.A. - Lottery Grants

At 09:05 hrs. this date I received a telephone call from Mr. Ted Hughes, Deputy Attorney General. The purpose of the call was to ask whether we had initiated an investigation into the alleged misconduct of Mr. REID while he was a Minister of the Crown, in connection with the distribution of lottery funds. I informed Mr. Hughes that to my knowledge we had not undertaken any such investigation. He asked if we would.

I informed Mr. Hughes that if it was his wish or that of the Attorney General that we undertake an enquiry,that we would accede to that request. He confirmed that the Attorney General wishes to have such an investigation. I then requested that we be given the name of a person from whom we might obtain details and documentation with respect to the questioned transactions.

At 09:50 hrs. I again spoke to Mr. Hughes, and he suggested that a person to be contacted is Mr. Peter MARTIN, Executive Director, Lottery Grants, Victoria. Tel: 387-4304.

In the meantime, I have spoken to Supt. Sebastian with a request that he designate an officer to undertake this investigation. I would request your immediate follow-up and that the investigation be undertaken on a priority basis.

Please keep me informed of developments.

D.K. Wilson, D/Commr.
Commanding Officer
"E" Division.

OIC Fed. Operations.
For immediate attn.
89.09.25

cc: OIC FEDERAL OPERATIONS.

Canada

Royal Canadian Mounted Police
Gendarmerie royale du Canada

Commanding Officer "E" Division Commandant divisionnaire
657 West 37th. Avenue VANCOUVER, British Columbia V5Z 1K6

Your file Votre référence

Our file Notre référence

89E-15304

October 18th., 1989

DISCRETION TO PROSECUTE INQUIRY
EXHIBIT # 31
DATE: May 22, 1990
KH

Hon. E.N. HUGHES, Q.C.,
Deputy Attorney General
5th. Floor, 910 Government Street
Harbour Square Mall
VICTORIA, British Columbia
V8V 1X4

Dear Mr. Hughes:

Re: William Earl REID

In response to your request by telephone on September 25, 1989, the R.C.M.P. has commenced an investigation to determine whether there was criminal conduct on the part of the former Minister of Tourism, Recreation and Culture, and Provincial Secretary, or any other persons, with respect to the granting of a Growth & Opportunities B.C. grant to the Semiahmoo House Society.

During the latter part of 1988 the Government of B.C. established the GO BC program to provide grants to cover the capital costs of local groups and organizations who undertake initiatives in the areas of environmental, cultural, heritage, recreational, and multicultural enhancement. The program is funded by the transfer of revenue from the B.C. Lottery Fund [as provided for by the Lottery Act, R.S.B.C. 1979, c.249, s.7(b)] with $12 million being allocated for the remainder of 1988 and $50 million being committed for each of the three succeeding calendar years. The program is largely a discretionary fund disbursed personally by the Minister. There were some general guidelines established but these were not strictly adhered to.

....2

On March 9, 1989 the City of White Rock applied for a GO BC grant in the amount of $95,700 to partially fund a $164,700 multi-material recycling program. The application was revised on June [illegible], 1989 to request $257,700 to fund a $326,700 project utilizing the three bin concept whereby householders would sort recyclable refuse into tin, glass and paper. The latter application was deemed to have been withdrawn on June 26, 1989 and to have been replaced by an application from the Semiahmoo House Society for a grant of $277,065 to fund a community pride recycling project. The Society (which had some limited experience in paper recycling but which was not equipped to enter the recycling business on the scale anticipated by the grant) did not actually apply for the grant. The relevant file does not have an application in the usual format but contains a handwritten list of details (which REID admitted to completing while testifying under oath during the Comptroller General's hearing pursuant to the Inquiry Act, R.S.B.C. 1979, c.198). On June 26, 1989 REID attended the regular meeting of the White Rock Council and announced the grant. Municipal officials were given the impression that the City of White Rock's application had been approved but later learned that a cheque for $138,532 (50% of the $277,065 grant) had been made payable to the Semiahmoo House Society.

During the week of October 9, 1989 the Comptroller General examined REID, George Gordon DOONAN (REID's campaign manager), Richard William SULLIVAN (family friend of REID), Peter MARTIN (Executive Director of Public Programs in REID's former Ministry), Hans Guenther SCHINZ (REID's executive assistant), and Mayor G.J. HOGG of White Rock. Unfortunately, our investigator was not in attendance during the testimony as counsel for the Comptroller General was concerned that such a presence could adversely affect the candidness of the witnesses. A transcript of the proceedings is expected to be available early in the week of October 23, 1989.

We have examined the GO BC files with respect to the White Rock/Semiahmoo House Society grants as well as twelve other GO BC grant files where the applicants are located in REID's and neighbouring constituencies. No criminal conduct was apparent in the latter twelve files (although a number of non-criminal irregularities were noted and are being investigated by the Comptroller General) but the White Rock/Semiahmoo House Society grant is potentially a fraud against the Corporation of the City of White Rock by REID, DOONAN and SULLIVAN and, if so, it may also amount to a Breach of Trust by Public Officer, Criminal Code, R.S.C. 1985, c.C-46, s.122, on the part of REID.

....3

It appears that DOONAN and SULLIVAN convinced White Rock officials that the three bin system was superior to their original single bin plan, REID redirected the grant to the Semiahmoo House Society (which avoids the usual tendering process that would have occurred had White Rock's application been granted), and DOONAN and SULLIVAN directed the Executive Director of the Society to prepare a purchase order whereby ECO-CLEAN WASTE SYSTEMS Ltd. (a company whose sole officer and director is DOONAN's spouse) would supply all the items funded by the grant. The grant cheque was deposited by the Society and a Society cheque was issued paying the entire amount to ECO-CLEAN WASTE SYSTEMS Ltd. It also appears that $50,000 (which the suspects alleged was for 'research and development' but in reality was the cost of the molds for the stackable bins) was concealed in the cost of the bins. The net effect of these transactions is that the City of White Rock is deprived of the assets required to carry out a recycling program and ECO-CLEAN WASTE SYSTEMS Ltd. becomes the owner of the molds and is in a position to favourably compete for contracts with other municipalities.

The investigation is continuing and you will be informed of future developments.

D.K. WILSON, Deputy Commissioner
Commanding Officer,
"E" Division

Royal Canadian Mounted Police | Gendarmerie royale du Canada

Commanding Officer "E" Division Commandant divisionnaire
657 West 37th. Avenue VANCOUVER, British Columbia V5Z 1K6

RECEIVED
OCT 26 1989
DEPUTY ATTORNEY GENERAL

Your file Votre référence

Our file Notre référence
89E-15304

October 18th., 1989

DISCRETION TO PROSECUTE INQUIRY
EXHIBIT # 32
DATE: May 22, 1990

Hon. E.N. HUGHES, Q.C.,
Deputy Attorney General
5th. Floor, 910 Government Street
Harbour Square Mall
VICTORIA, British Columbia
V8V 1X4

Dear Mr. Hughes:

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D.K. WILSON, Deputy Commissioner
Commanding Officer,
"E" Division

RCMP GRC TRANSIT SLIP *FICHE DE SERVICE*

• HANDWRITE – *ÉCRIRE À LA MAIN*

BN
BD

Classification Protected

File No. – *N° de dossier* 89E-15304

Date 9

To - *À*	FROM – *DE*	Date
OIC FEDERAL OPERATIONS	OIC VANCOUVER C.C.S.	89-12-13
OIC Cr. Ops.		" 14

DISCRETION TO PROSECUTE INQUIRY

EXHIBIT # 33

DATE: May 22, 1990

☐ Comments *Commentaires*
☐ Perusal and P.A. *Lire et classer*
☐ Action *Donner suite*
☐ Prepare Reply *Rédiger une réponse*
☐ Prepare Brief *Préparer un exposé*
☐ Make File(s) *Ouvrir un dossier*
☐ Return with Current File *Retourner avec le dossier actu*
☐ Check Records *Vérifier les dossiers*

SUBJECT – *SUJET*

William E. REID

REMARKS (Use same A-5 for Reply when space permits) – *REMARQUES (Si l'espace le permet, répondre sur cette formule)*

RCMP GRC

TRANSIT SLIP *FICHE DE SERVICE*

● HANDWRITE – *ÉCRIRE À LA MAIN*

BN
BD

Classification

File No. – *N° du dossier*
89E-15304

TO – *À*	FROM – *DE*	Date
OIC FEDERAL OPERATIONS	OIC VANCOUVER C.C.S.	89-12-1

DISCRETION TO
PROSECUTE INQUIRY.
EXHIBIT #. 34
DATE: May 22/1990
KRA

☐ Comments *Commentaires*
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☐ Action *Donner suite*
☐ Prepare Reply *Rédiger une réponse*
☐ Prepare Brief *Préparer un exposé*
☐ Make File(s) *Ouvrir un dossier*
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☐ Check Records *Vérifier les dossiers*

SUBJECT – *SUJET*

William E. REID

REMARKS (Use same A-5 for Reply when space permits) – *REMARQUES (Si l'espace le permet, répondre sur cette formule)*

RCMP GRC

CONTINUATION REPORT

RAPPORT DE CONTINUATION

OCCURRENCE No — Nº D'INCIDENT

89-E-15304

BIN — BD

REID

ACTION TAKEN MESURES PRISES

DISCRETION TO PROSECUTE INQUIRY

EXHIBIT # 35

DATE: May 22, 1990

SUI ECE ▶ 00-04

Date 90-01-02

SUPERVISOR SUPERVISEUR

☐ Consulted consulté ☐ Attended sur les lieux ☐ [illegible]

Signature

Date

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Other — Autre

PAGE

Government of Canada
Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

MEMO TO FILE: 89E.15304

SECURITY - CLASSIFICATION DE SÉCURITÉ
PROTECTED

OUR FILE - N/RÉFÉRENCE
89E.15304

YOUR FILE - V/RÉFÉRENCE

DATE
90-01-05

OIC CRIMINAL OPERATIONS
"E" DIVISION

DISCRETION TO
PROSECUTE INQUI
EXHIBIT # 36
DATE: May 22, 199

William Earl REID,
Breach of Trust by a Public Officer,
Section 122 Criminal Code.

Province of British Columbia

OFFICE OF THE ASSISTANT DEPUTY ATTORNEY GENERAL

Ministry of Attorney General

Criminal Justice Branch
bour Square, Third Floor
0 Government Street
Victoria
British Columbia
V8V 1X4

OUR FILE ....

YOUR FILE ....

January 30, 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 37
DATE: May 22, 1990

Assistant Commissioner D.K. Wilson
Commanding Officer
"E" Division
Royal Canadian Mounted Police
657 West 37th Avenue
Vancouver, British Columbia
V5Z 1K6

Dear Assistant Commissioner Wilson:

Re: Reid, Doonan and Sullivan

Further to the Report to Crown Counsel submitted by Inspector E.C. McCauley concerning his investigation into the activities of Messrs. Reid, Doonan and Sullivan, enclosed are copies of the following:

1. Report dated January 17, 1990 from Robert H. Wright, Q.C., Regional Crown Counsel for Vancouver, to William F. Stewart.
2. Report dated January 18, 1990 from Richard C.C. Peck, Q.C., to Robert H. Wright, Q.C.
3. Report dated January 29, 1990 from John E. Hall, Q.C., to Robert H. Wright, Q.C.

I have reviewed these three reports and I am in agreement with the recommendations expressed by Mr. Wright and Mr. Hall. In my opinion there is not a substantial likelihood of conviction of Reid, Doonan or Sullivan and I will not approve the laying of any charges under the Criminal Code against any of these three individuals.

Should you require any further information concerning this file, please do not hesitate to contact me.

Yours truly,

W F Stewart

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

90.01.30

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 38
DATE: May 22, 1990

January 30, 1990

Assistant Commissioner D.K. Wilson
Commanding Officer
"E" Division
Royal Canadian Mounted Police
657 West 37th Avenue
Vancouver, British Columbia
V5Z 1K6

Dear Assistant Commissioner Wilson:

Re: Reid, Doonan and Sullivan

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Should you require any further information concerning this file, please do not hesitate to contact me.

Yours truly,

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

Royal Canadian Mounted Police
Gendarmerie royale du Canada

Commanding Officer
Co[illegible]ndant divisionnaire

"E" Division
657 West 37th. Avenue, VANCOUVER, B.C. V5Z 1K6

Your file Votre référence

Our file Notre référence

February 7th., 1990

89E-15304

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 39
DATE: May 22, 1990

Hon. E.N. Hughes, Q.C.
Deputy Attorney General
Ministry of the Attorney General
5th. Floor, 910 Government Street
VICTORIA, British Columbia
V8V 1X4

Dear Mr. Hughes:

RE: William Earl REID

Following receipt of a letter, dated January 30, 1990, from your Assistant, William F. Stewart, I have reviewed the three opinions and directed the Officer in Charge of Vancouver Commercial Crime Section to provide me with his analysis of the opinions (a copy of which is enclosed). Regretfully, we are not in total agreement with Mr. Stewart's proposed disposition of this matter. While we are in agreement with the three counsel's views that the fraud is too tenuous to undertake as a viable prosecution and that there is insufficient evidence to prosecute George Gordon Doonan and Richard William Sullivan as parties to the offence of breach of public trust, we are of the view that the proposed charge against Reid (under s.122 of the Criminal Code) deserves further consideration.

I am asking you to reconsider the Ministry's position on this matter with respect to your willingness to prosecute Reid utilizing the evidence currently available plus the testimony of Doonan and Sullivan which will be available if they are not charged with Reid.

....2

Canada

20.03.91

The matter of the premature release of Mr. Stewart's decision to the media is also of concern to me. I would have preferred to have had a reasonable opportunity to consider the legal opinions rendered, and accept Mr. Stewart's invitation to discuss this matter, prior to the Ministry's position being communicated to the media.

Thank you for your consideration of this matter and I look forward to the results of your review.

D.K. WILSON, Deputy Commissioner
Commanding Officer
"E" Division

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 40
DATE: May 22, 1990
KRH

Province of British Columbia
Ministry of Attorney General

Criminal Justice Branch

CROWN COUNSEL HANDBOOK

TITLE	DATE	CANCELS	NO
POLICY	10-15-86		QUA 1

SUBJECT	REFERENCE
Quality Control	
	CROSS-REFERENCE WEA 2

Quality control refers to a system in which all criminal and provincial charges are viewed and approved by experienced Senior Crown Counsel before the Informations are sworn. This ensures that the quality of criminal charges is maintained and that the necessary investigative material is available to assist the Crown in undertaking the prosecution of such charges.

Quality control is effective ministerial policy within the Province of British Columbia. This policy further ensures that the final decision as to which charges will proceed in court rests with Crown Counsel.

The general guidelines for approval of charges are:

1. Substantial likelihood of conviction; and
2. prosecution warranted in the public interest.

In considering the "public interest", the following factors are relevant:

- (a) The nature and seriousness of the allegations;
- (b) the personal circumstances of the accused including the accused's criminal record;
- (c) the likelihood of achieving the desired result without a court proceeding, including an assessment of the available alternatives to prosecution;
- (d) the harm caused to the victim; and
- (e) on balance, the social benefit to be gained by the prosecution.

025

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT #. 41
DATE: May 22, 1990

Province of British Columbia
Ministry of Attorney General
Criminal Justice Branch

CROWN COUNSEL POLICY MANUAL

TITLE	DATE	FILE No.	No.
POLICY	10-01-89	55100-00	QUA 1

SUBJECT

Quality Control - Charge Approval

REFERENCE

Cons/Rev
JRC #60

CROSS-REFERENCE

QUA 1.1
QUA 1.2

Charge Standards

Allegations must be examined to determine whether there is a substantial likelihood of conviction; and if so, whether the public interest requires a prosecution of the accused.

1. Substantial Likelihood of Conviction

In determining whether a charge should be laid, counsel must first conclude that it is likely that there will be a conviction after considering all relevant matters including the likely defence, if it is apparent. There must be significantly more than just a prima facie case.

If counsel is to accurately assess the likelihood of conviction, the Report to Crown Counsel (RCC) must provide an accurate and detailed statement of the evidence available. The following are the basic requirements for every RCC:

(a) A comprehensible description of the evidence supporting each element of the suggested charge(s);

(b) where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;

(c) necessary evidence check sheets;

(d) copies of all documents required to prove the charge(s);

(e) a detailed summary or written copy of the accused's statement(s).

.../2

There may be cases where the RCC will not comply with the quality control standards. The RCC should then be returned to the investigator with a request for additional information before a charge is approved. If the accused is in custody, Crown should not seek to detain the accused in custody without sufficient written material from the police to justify both the charge and the detention.

If the offence is serious and there is sufficient evidence to charge the detained accused but insufficient information to determine Crown's position on release, resort may be had to s. 516 to adjourn the show cause. This should be rare and used only where it appears necessary to protect the public.

2. Public Interest

Counsel must next determine whether the public interest dictates a prosecution. Hard and fast rules cannot be imposed and flexibility in decision making at the local level is essential if the Ministry is to respond to the legitimate concerns of each community.

There are, however, a number of factors counsel should consider in assessing the public interest in a prosecution:

(a) The nature and seriousness of the allegations;

(b) the personal circumstances of the accused, including his or her criminal record;

(c) the likelihood of achieving the desired result without a court proceeding, including an assessment of the available alternatives to prosecution;

(d) the harm caused to the victim, if any; and

(e) the cost of a prosecution compared to the social benefit to be gained by it. This will include considerations such as the degree to which this offence (as opposed to this offender) represents a community problem which cannot be effectively dealt with otherwise. The important obligations are to:

    (i) make the decision; and
    (ii) communication with those affected so that they understand the reasons for the decision even if they do not agree with it.

#26

Province of British Columbia
Ministry of Attorney General
Criminal Justice Branch

CROWN COUNSEL POLICY MANUAL

TITLE	DATE	FILE No.	No.
POLICY	10-01-89	55100-00	QUA 1.2

SUBJECT	REFERENCE
Quality Control - Charge Approval - Police Appeal Regarding Crown Decision	JRC #61
	CROSS-REFERENCE
	QUA 1

Inherent in the charge approval process is an invitation to the police to discuss reasons for rejection of a charge with counsel who rejected the charge. It is, therefore, the responsibility of the police to contact the Administrative Crown should they wish to discuss reasons for rejecting a charge. While protocols with the police may be developed at the local level, each Crown Counsel office should be the initial focus for police concerns.

A Chief Constable or Officer in Charge of a detachment who disagrees with a decision not to lay a charge and who disagrees with the attempts to resolve the matter at the local level, may ask Regional Crown Counsel for a review of the decision. Regional Crown Counsel shall ensure that such a review occurs and advise the senior officer of his decision.

A Chief Constable or Officer in Charge of a detachment who disagrees with that decision may ask the Assistant Deputy Attorney General, to review the decision and if asked, the Assistant Deputy Attorney General will review the matter and advise the senior officer of his decision.

In addition to the foregoing, a Chief of Police or Deputy Commissioner of the RCMP in the province may appeal a charge approval decision directly to the Deputy Attorney General, but only if the situation is urgent or a matter of significant public interest or public policy.

#37

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT #. 42
DATE: May 22, 1990

PROVINCE OF BRITISH COLUMBIA

MINISTRY OF ATTORNEY GENERAL

CRIMINAL JUSTICE BRANCH

CROWN COUNSEL MANUAL

VOLUME II - PROCEDURE

CM2-44

PROCEDURE MANUAL

This manual has been designed to assist legal officers and support staff by encouraging the use of rational and consistent procedures in Crown offices throughout the province. Deviation from the procedures set out herein should occur only with the permission of Regional Crown Counsel.

All personnel are encouraged to forward suggestions for the improvement of procedures. Changes in procedure will be transmitted to the Criminal Justice Organization by the circulation of updated material for inclusion in this manual.

December 1987

CROWN PROCEDURE MANUAL

MARCH 11/88

PART I PROVINCIAL COURT (ADULT)

CHAPTER 1 QUALITY CONTROL OF CHARGES

INTRODUCTION

Amongst the most important of Crown Counsel's duties is the exercise of effective quality control. It is mandatory that this function be carried out rationally, objectively, and efficiently. The procedures set out herein are designed to facilitate achieving these objectives.

In order to create a streamlined operation, the amount of paper retained and the amount of filing done in Crown Counsel offices should be reduced to a minimum. With few exceptions, files are not opened until charges are approved. Generally, reports are returned or sent to other agencies for those agencies to act upon them without retaining a copy in the Crown office. All Reports to Crown Counsel (RCC's) are indexed with a brief description of the status as a reference for tracking and phone inquiries.

A. CHARGE STANDARDS

The charge-approval counsel examines the allegations to determine whether there is a substantial likelihood of conviction; and if so whether or not the public interest requires a prosecution of the accused, on this occasion.

1. Substantial Likelihood of Conviction

In determining whether or not a charge should be laid, counsel must first conclude that it is likely that there will be a conviction after considering all relevant matters including the likely defence, if it is apparent. **There must be significantly more than just a prima facie case.**

If counsel is to accurately assess the likelihood of conviction, the Report to Crown Counsel (RCC) must provide an accurate and detailed statement of the evidence available. The following are the basic requirements for every RCC:

(a) A comprehensible description of the evidence supporting each element of the suggested charge(s);

(b) Where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;

(c) Necessary evidence check sheets;

(d) Copies of all documents required to prove the charge(s);

(e) A detailed summary or written copy of the accused's statement(s).

There are cases where the RCC will not comply with the quality control standards. This may happen when the allegations are complex and serious, and/or the accused is in custody, and his/her (continued) detention is necessary to protect the public. These cases should be extremely rare. In any event, counsel should not seek to detain a person in custody without sufficient written material from the police to justify detention.

2. Public Interest

Counsel must next determine whether the public interest dictates a prosecution. Hard and fast rules cannot be imposed and flexibility in decision making at the local level is essential if the Ministry is to respond to the legitimate concerns of each community.

There are, however, a number of factors counsel should consider in assessing the public interest in a prosecution:

(a) The nature and seriousness of the allegations;

(b) The personal circumstances of the accused, including his or her criminal record;

(c) The likelihood of achieving the desired result without a court proceeding, including an assessment of available alternatives to prosecution;

(d) The harm caused to the victim, if any;

(e) The cost of a prosecution compared to the social benefit to be gained by it. This will include considerations such as the degree to which this offence (as opposed to this offender) represents a community problem which cannot be effectively dealt with otherwise. The important obligations are to:

(i) Make the decision; and

(ii) Communicate with those affected so that they understand the reasons for the decision even if they do not agree with it.

B. CHARGE REJECTION

Suggested charges are rejected because:

- More information is required prior to making a final decision; or
- The facts do not disclose a substantial likelihood of conviction; or
- A prosecution is not warranted on discretionary grounds.

1. More Information Required (Counsel's Responsibilities)

If further information is required:

(a) The "returned" box on Page 1 of the RCC is checked;

(b) The report is dated and initialed by counsel;

(c) The reasons for returning the file are provided to the investigative agency in the "comments" section on Page 1 of the RCC. Additional memoranda or letters setting out these reasons are generally to be avoided;

(d) The entire RCC is forwarded to the secretary for indexing and then returned to the investigative agency.

2. No Charge (Counsel's Responsibilities)

Where counsel determines that charges are not to be proceeded with:

(a) The "no action/charge" box is checked;

(b) The report is dated and initialed;

(c) The reasons for the decision are provided. Except in unusual circumstances, these comments will consist of a short note in the "comments" section of the RCC;

(d) The entire RCC is forwarded to the secretary for indexing and then returned to the investigative agency.

When communicating with the police by using the allotted space on the RCC, counsel should bear in mind that copies of the first page are distributed to other agencies as well as to the police. Notwithstanding 1.(c) above, highly critical or confidential comments should be transmitted by memo and a reference to the existence of the memo along with a simple statement of the reason for the decision should be made on the RCC, e.g., "Need statement from second driver, see memo to S/S Smith, Dated 12 July 87".

3. Follow Up (Police Responsibilities)

Rejected charges are indexed solely to assist the Crown Counsel office in answering outside inquiries regarding the file. Where an RCC is returned, the investigative agency and not the Crown Counsel office is responsible for the continued conduct of the file. The Crown Counsel office does not normally assume responsibility for responding to inquiries (other than from the police) with respect to returned RCC's. If the investigator wishes to proceed further, he/she has a duty to return the RCC to counsel along with the requested details. On those rare occasions when counsel decides a request for further information warrants follow up, the bring-forward diary is used prior to returning the entire RCC to the investigative agency. The police should be encouraged to create and rely on their own bring-forward system for follow-up requests from Crown Counsel.

Similarily, where process has been issued to the accused, but the charges are not being proceeded with on the returnable date, the onus is on the investigator to advise the accused of the fact that he/she need not attend.

Finally, it is the responsibility of the police to contact the Crown Counsel office should they wish to discuss counsel's reasons for rejection. The officer in charge of each investigative agency is to be advised that inherent in the charge-rejection process is an invitation to discuss the reasons for rejection with the counsel who initialed the RCC.

C. CHARGE APPROVAL (Counsel's Responsibilities)

INTRODUCTION

The charge-approval process set out herein is designed to encourage effective quality control. To ensure consistency, the same legal officer should be assigned charge-approval duties for extended periods of time when practical. As many of the logistical functions as possible are to be carried out by charge-approval counsel so that the trial counsel can concentrate on his/her duties as a barrister. The notification of witnesses should take place as soon as possible after the trial date is fixed thereby reducing the additional work engendered by delay. Notwithstanding the foregoing, it is the duty of the trial counsel to review the cases he/she will prosecute and to add or delete witnesses as necessary for ultimately trial counsel are responsible for their own trials.

When a charge is approved, Counsel is to do the following:

1. Check the "approved/to court" box and note on Page 1 of the RCC:

(a) charges which are approved;

(b) the number of the charges which are approved;

(c) the number of witnesses which are required;

(d) the estimated length of the Crown's case;

(e) victim-impact statement instructions (where applicable);

(f) an "F" if the case is one involving child sexual abuse where the accused is known to the victim;

(g) a "G" if the case is one involving child sexual abuse where the accused is not known to the victim;

(h) an "S" if the case is a Spousal Assault;

(i) special assignment (where applicable);

(j) whether by indictable or summary proceeding;

(k) whether or not a voir dire is likely;

(l) whether Crown is required for fixing a date for trial (optional where there is a trial coordinator);

(m) archive information;

(n) the date;

(o) counsel's initials.

2. In the "comments" section on Page 1, set out counsel's instructions relating to the file;

3. Indicate on Page 2 of the RCC the witnesses required (unless the case is special assignment), box "L" is checked where a civilian witness letter or police notification (LENS) is appropriate, and box "S" where a subpoena is required, and box "T" when a telephone call is required;

4. In compliance with the Ministry's policy of full disclosure, specify the material which counsel does not wish released to the defence;

5. Transfer the RCC to support staff for typing the information and opening the file;
6. Prior to the swearing of the information, proofread its contents (optional).

D. DIVERSION (Counsel's Responsibilities)

Where counsel determines that diversion is appropriate, he/she is to:

1. Check the "Diversion/Alternative Measure" box and note on Page 1 of the RCC the charge(s) which are approved, the date, and counsel's initials;
2. Suggest conditions for diversion in the "comments" section on Page 1 of the RCC, if appropriate.

MOE SIHOTA, M.L.A.
ESQUIMALT-PORT RENFREW
LEGISLATIVE BUILDINGS
VICTORIA, B.C. V8V 1X4
TELEPHONE: 387-6723

LEGISLATIVE ASSEMBLY
PROVINCE OF BRITISH COLUMBIA

CONSTITUENCY OFFICE:
1610 ISLAND HIGHWAY
VICTORIA, B.C. V9B 1H8
TELEPHONE: 474-1833

RECEIVED
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ATTORNEY GENERAL

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ATTORNEY GENERAL
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DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 43
DATE: May 22, 1990
#24

April 2, 1990

Hon. Bud Smith
Attorney General
Legislative Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Smith:

Your letter of March 26, 1990, to Mr. Harcourt has been forwarded to my attention for reply in my capacity as the Attorney General critic.

Before addressing those matters raised in your letter, I want to take this opportunity to make a more general observation with respect to the entire Reid affair.

* It is now clear to the people of British Columbia that a decision was made not to release the recommendations of the RCMP investigation. In my view, the special role of an Attorney General requires that information under these circumstances not be withheld. Consequently, there has been appropriate discussion arising out of the Reid affair about the role of an Attorney General when matters relating to a political colleague and his or her criminality are at issue. Part of our intention in raising these matters on March 20, 1990, was to ensure that discussion took place in this province.

n't release
info of CC
reports

The remarks made by Mr. Harcourt and myself on March 20, 1990, were based upon the facts made public by the media, and subsequently confirmed in the reports made by the Auditor General, the Comptroller General, and your ministry.

As a result, the people of British Columbia now understand the police have reasonable and probable grounds to believe that Mr. Reid abused his public trust while acting as a minister of the Crown, and as a consequence, may have committed an indictable criminal offence.

2/...

~~cc~~:- Mr. E.N. (Ted) Hughes, Q.C. (FAX)

Since you have chosen not to prosecute Mr. Reid, I am left to assume that you have evidence exculpating Mr. Reid. I take it that evidence was somehow overlooked or ignored by the RCMP. If so, I believe it is in the public interest to know what that evidence is. I therefore invite you to tell me.

substantial [illegible]

I also think it is incumbent upon you to advise me as to what public interest considerations were applied in this case. I believe it is incumbent upon you to assure the people of British Columbia that justice appears to have been done.

I therefore invite you to provide me with this information. In addition, I would be grateful if your office could forward to me the following material so that I may have a clear idea as to why and on what basis the RCMP recommendations were rejected. The materials I am interested in receiving include:

1. the RCMP report delivered to your ministry,
2. the initial assessment or opinion prepared by Crown counsel,
3. the RCMP request for a review of the matter,
4. the legal opinions that were then obtained from the Crown counsel, Bob Wright, and the Vancouver lawyers, Mr. Peck and Mr. Hall, and
5. the memorandum of opinion or recommendation prepared for you by Mr. Stewart or Mr. Hughes resulting from their subsequent deliberations with counsel.

I am confident that it is your desire to remove any doubt with respect to this matter, and therefore, I trust that you have no objection to the sharing of this information with myself in my role as a Member of the Legislature.

What is standard for sharing information
- don't share the info with just any criticism

I trust that I will be hearing from you shortly.

Yours truly,

Moe Sihota, MLA
Esquimalt-Port Renfrew

MS/md

cc: Mr. Mike Harcourt, Leader of the Official Opposition.

Province of
British Columbia

OFFICE OF THE
ATTORNEY GENERAL

Ministry of
Attorney General

Attorney General
Victoria
British Columbia
V8V 1X4
Telephone: (604) 387-1866

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT #: 44
DATE: May 22 1990

MINISTRY OF ATTORNEY GENERAL
RECEIVED
APR 1[illegible] 1990
Criminal Justice Branch
File No. 55100-01

WST

April 10, 1990

Mr. Moe Sihota, M.L.A.
(Esquimalt-Port Renfrew)
New Democratic Party Caucus
Parliament Buildings
Victoria, British Columbia

Dear Mr. Sihota:

I reply to your letter of April 2, 1990, which I received April 4.

You ask for all R.C.M.P. reports and legal opinions rendered in this matter. I must tell you that generally speaking R.C.M.P. reports and the views of Crown Counsel in assessing allegations are not made known to the public. There are good reasons for this. These opinions may unnecessarily damage the reputations of persons not charged with offences or prejudice the right to a fair trial of those who are.

As you may be aware, the practice in British Columbia is for the police agencies to investigate incidents and, where appropriate, to recommend to Crown Counsel the laying of charges.

It is the established role of Crown Counsel in British Columbia to review the results of the investigation together with the police recommendations and to determine, in accordance with well established policy, whether charges are appropriate. This policy requires that Crown Counsel only proceed with cases where they are satisfied that there is a substantial likelihood of conviction and it is in the public interests to proceed with the prosecution.

There is good reason for this policy. The justice process should not be invoked in cases where the allegations cannot be substantiated. To do otherwise calls into question, without justification, the reputation of innocent persons. Reputations can be ruined forever by unsubstantiated public allegations. To proceed with charges that do not meet the charging standards would also not only clog the courts, it would simply not be fair to the public or to the accused.

The Deputy Attorney General, the Assistant Deputy Attorney General for the Criminal Justice Branch, Regional Crown Counsel for Vancouver, and the majority of senior private counsel consulted have concluded that there was not a substantial likelihood of conviction against Mr. Reid.

These conclusions were reached not on the basis of evidence overlooked or unknown to the police which might have exculpated Mr. Reid, but rather on the basis that the evidence presented by the police did not indicate a substantial likelihood of conviction. As you may know, the Crown must prove that an accused is guilty beyond a reasonable doubt. A citizen need not prove his innocence.

The criteria applied in this case protect every person in this Province from being charged with an offence when there is not a substantial likelihood of conviction.

If there is insufficient evidence, it would not be in the public interested to proceed.

I cannot understand on what basis you feel you are entitled to review and presumably second guess the process followed in this or any other case. The duty to make these decisions rests, as it should, with disinterested professionals, not with members of the Legislature.

It is imperative that the justice process operates free from even a mere perception of political interference. Practice and convention in this Province have long excluded the Attorney General from personally demanding, receiving or reviewing reports to Crown Counsel or Criminal Justice files. I agree with this practice. In my view, the public must be protected from any Attorney General interfering in the charging process by examining files and reviewing charging decisions.

To comply with your request would require that I instruct Ministry officials to release the file to you and this I am not prepared to do. With the knowledge that the Attorney General does not receive Criminal Justice files, I would think you would agree that no M.L.A., including the Opposition Justice critic, should have access to these files.

The only possible reason for your requests to date is the inspiration directed by political considerations. I will not inject political considerations into the process. Indeed, at all costs, I will protect the process from those who would.

An Attorney General must not, except in the clearest and most compelling of exceptional circumstances, become involved in a review of charging decisions. Intervention by the Attorney General is only appropriate in instances such as when the integrity of Ministerial officials has been brought into question. This is not a case falling into the exceptional category. For me to become involved, therefore, would set a dangerous precedent, one that would interfere with and compromise the integrity and independence of the whole charging process.

It is my view that the professionalism and independence of the counsel involved, and not the review process you propose, answer whether this matter was properly handled.

In responding to my letter of March 24, 1990 as you have done, it is apparent that you have nothing to furnish to Mr. Hall for his further consideration. Having entered in the public arena with this matter as you have done, causes me much regret on behalf of those competent, honest, experienced people whose decisions you only inferentially are prepared to attack.

Fundamental to our liberty is the fact that no citizen should ever have to worry about any Attorney General releasing files to anyone not authorized to have them.

In closing, your request is denied for the very sound reason that it is unprincipled and, if granted, would set a precedent corrosive of, if not corrupting to, the administration of justice in British Columbia.

Yours sincerely,

Bud Smith

Bud Smith
Attorney General.

Hand delivered - 90/04/11 - 2:30 p.m.

[illegible]

British Columbia
Attorney General

OFFICE OF THE
ATTORNEY GENERAL

Victoria
British Columbia
V8V 1X4
Telephone: (604) 387-1866

16

March 26, 1990

Confidential Copy
for Bill [illegible]

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 45
DATE: May 22, 1990
[illegible]

Mr. Michael Harcourt, M.L.A.
(Vancouver Centre)
Leader of the Opposition
New Democratic Party Caucus
Parliament Buildings
Victoria, British Columbia

Dear Mr. Harcourt:

Re: William E. Reid

I have had the opportunity of considering your remarks at the March 20 press conference. You stated that you believe there to be sufficient evidence to warrant the laying of charges. One of a number of respected and experienced counsel who, following a review of all available material, has advised otherwise is Mr. John E. Hall, Q.C. of the Vancouver legal firm of DuMoulin Black, 595 Howe Street, Telephone 687-1224.

Mr. Hall has been requested to be available to review and advise on any material, evidence, potential witnesses and whatever you now bring forward so that a reconsideration of the decision reached in this matter by senior officials in the Ministry of Attorney General can take place. That reconsideration would be centred on what you furnish to Mr. Hall by way of new information not previously taken into account when he and others, each independently, advised on the matter.

I observe that it was stated at the press conference that prominent defence counsel and Crown counsel have advised you on this matter. I would invite you to make opinions obtained from these sources available to Mr. Hall. As well, it would be entirely appropriate for you or any of the counsel who have advised you or any of your colleagues to make an appointment with Mr. Hall and to attend upon him to give him whatever information you consider relevant.

You are aware that a report of a police investigation and the Marson Report were taken into account by Mr. Hall and others as they prepared and delivered their advice on this matter.

I would ask that if you propose to avail yourself of this proposal that you communicate with Mr. Hall by one week from today. That would allow for a meaningful consideration of what you have furnished and for the delivery of a further considered and informed opinion.

Yours sincerely,

Bud Smith

Bud Smith
Attorney General.

cc:- Mr. John E. Hall, Q.C.

Mr. Harcourt's copy hand delivered
26.3.90 - 3:45 p.m.
Mr. Hall's copy faxed and mailed.

Province of
British Columbia

OFFICE OF THE
DEPUTY ATTORNEY GENERAL

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DISCRETION TO
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March 24, 1990

The Honourable Bud Smith, Q.C.
Attorney General for the
Province of British Columbia
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Mr. Smith:

Re: William Earl Reid

The final decision that Reid would not be charged with an offence under the Criminal Code was made by me. In making that decision I was meeting a responsibility that rests with the office of Deputy Attorney General of British Columbia.

Many statements about the Reid matter have been publicly reported over the last three days. Representative of those statements is "that the decision not to charge Mr. Reid was tainted by the appearance of coverup". (Globe and Mail, March 22).

That is a serious allegation that undercuts the very foundations of the criminal justice system in this province and, surely, must shake public confidence in that system. That being so, this letter is not the proper medium to either explain my actions and those of other senior officials in the Ministry, or to comment on the stated allegation. Very obviously, however, immediacy in addressing the matter is required. In our discussions you have agreed with me that this is so. I have decided that the responsible course is to recommend that you forthwith have a Judicial Inquiry constituted to investigate in a public forum the process giving rise to the decision made in this instance.

If you accept that recommendation I have a request to make of you. Nearly five months ago I wrote to you (with copy to Deputy Minister Rhodes) setting out my reasons, which were totally unconnected to the Reid matter, why it was time for me to relinquish the position of Deputy Attorney General and assume less onerous responsibilities. We subsequently agreed on April 30, 1990 as a date for that to occur. I now ask for the opportunity to withdraw my resignation. The honourable course is for me to stay at the helm of the ship at least until the propriety and integrity of events and decisions taken over recent weeks have been pronounced upon, one way or the other, by such respected Jurist that is decided upon.

If you retain sufficient confidence in me to grant this request I can assure you and, through you, the people of British Columbia that with the loyal support of the dedicated and honourable staff at all levels of responsibility in the Ministry of Attorney General that I believe I enjoy, that confidence will neither be abused nor misplaced pending receipt of the report of the Judicial Inquiry.

Yours sincerely,

E.N. (Ted) Hughes
Deputy Attorney General

MR. SPEAKER: That having been settled, I'll start question period again, and we'll start the clock now.

Oral Questions

ABORTION SERVICES

MS. PULLINGER: Mr. Speaker, I have a question for the Premier. As you're probably aware, the Nanaimo Regional General Hospital board has recently decided to hold a referendum on the issue of abortion. Can the Premier inform this House what steps he has taken to tell the Nanaimo hospital board that, referendum or not, your government will not tolerate any interference in a woman's right to a safe, legal abortion?

HON. MR. VANDER ZALM: Mr. Speaker, I'm still surprised every time I hear the opposition question the process of democracy. Why would anyone be opposed to democracy? Are you, hon. member, opposed to democracy?

MS. PULLINGER: I thought we on this side of the House asked the questions. I mean, let's just talk about democracy. This is a decision that has been condemned by the local Member of Parliament; it has been condemned by the two MLAs of the area; it has been condemned by the regional board, which is locally elected and which also decided to question whether or not it would provide funds to the hospital; it has been condemned by city council; it has been condemned by the hospital's doctors; it has been condemned by the health services employees. The decision to halt abortions was made against the advice of the patient care committee.

The law is clear. The three court decisions have affirmed that women have the right to abortion services. The only reason this board and other hospitals continue to frustrate women's rights is your sorry leadership in imposing your own narrow personal and religious views.

HON. MR. RICHMOND: Point of order, Mr. Speaker. With the greatest of respect, I would urge you to ask the member to get to a question rather than make a speech.

[2:15]

MR. SPEAKER: The length of the preamble only determines the length of the answer. The Chair just tries to be equal in these things. The members of the opposition have a limited amount of time to ask questions. If they choose to use that limited amount of time with lengthy preambles, that is the practice that's been established. Would the member continue. It would be nice if you got to the actual question.

MS. PULLINGER: Had the member waited a moment, I was just ready to ask the question.

Is the Premier now prepared to instruct his minister to uphold the law and inform all hospital boards in this province that legal abortion services must not be restricted?

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HON. MR. VANDER ZALM: Mr. Speaker, I think we enjoy in this province some very dedicated municipal councils, school boards, hospital boards and other such organizations that do an excellent job. From time to time, perhaps, we may disagree with what they do or how it's done, but certainly there can't be any disagreement about a particular group seeking the opinion of the people in the community by whatever means are reasonably available.

If the member is again objecting, as I've heard so often from the NDP socialists, to this whole concept of involving the public in the decision-making process, then I say you are a sorry lot and don't have much of a chance at any time.

MS. PULLINGER: Mr. Speaker, I have a question for the Minister Responsible for Women's Programs. The minister has been quoted in the press recently as saying that she sees her role as simply "to act as an advocate for women." Given that the overwhelming majority of women in this province both understand the importance of access to safe, legal abortion services and want to ensure that it's retained, will the minister undertake to fulfil her commitment, as she stated it, to women and ensure that women in the mid-Island area do not lose this vital health care service?

HON. MRS. GRAN: I think the Premier has answered the question twice. There is a process in place, whether you like it or not on the other side of the House, and there is an opportunity, in every community that has a hospital, for every opinion to be represented. I would suggest to those people who do not like the opinion represented by a hospital board to get involved in the process.

GO B.C. GRANTS

MR. SIHOTA: A question to the Premier. The Premier, I am sure, is well aware of the circumstances surrounding the GO B.C. funds given to the Semiahmoo House Society by his government and his former minister. Does he condone the actions of his former minister?

HON. MR. VANDER ZALM: Perhaps I should take a moment here and make reference to a news release from the New Democrats dated April 4, 1990. If you ask about condoning, certainly I can comment on this particular news release. It's full of falsities; it's a total misrepresentation; it's a complete lie. I would like to point out that the member was obviously a party to this press release. Perhaps if he wishes to make reference to what is said about something, he ought to check the facts first.

MR. SIHOTA: The Premier seems to have some difficulty answering the question. I'll rephrase it so perhaps it will be a little easier for him. In this instance, as the Premier is aware, no application form was filled out by the society that ultimately got the money. Does the Premier consider that to be proper conduct for a minister who looks after lottery funds?

HON. MR. VANDER ZALM: I guess we saw in the first question coming from the socialist side of the House an attitude which tells us that unless the decision or the information coming from a group suits their particular philosophy or what it is they would like to see, they disagree with it, it's no good, and they can't in any way support it or even reasonably assess it. Here we have a similar situation. The member for Esquimalt–Port Renfrew is particularly noted for this sort of thing, and I think we hear as much sleazy stuff come from there as we hear from anywhere. The matter has been thoroughly investigated by respected people and respected bodies, but somehow he doesn't like what they're finding or how they commented on that particular circumstance. Therefore he naturally needs to pursue it further, because unless it's as he would like to see it, or as the socialists would have it, it's not good enough.

MR. SIHOTA: I take it that the answer to the question is that he does condone the behaviour of his minister.

The Premier talks about attitudes and what he would like to see and what people would like to see. The Premier talked quite some time ago about the standard that he expects from ministers. He said he wanted to ensure that those who are elected work under conditions and guidelines which leave no doubts whatsoever in the minds of the public as to the ethics and integrity of those who serve in public office.

In this case, funds were funnelled — and undisclosed — to a former campaign manager of the then minister. Does the Premier believe that in his opinion that standard of conduct — which I have just quoted from — was fulfilled by the minister in giving the funds to a campaign manager and not disclosing that fact?

HON. MR. VANDER ZALM: As the member is well aware, as soon as this whole issue was questioned, the minister resigned. As the member is well aware, there was a thorough investigation by the Attorney-General, by the RCMP and by the ombudsman. With all of that information, he still wishes to pursue it in order to attain whatever it is he wishes to achieve, which is pure politics, and frankly, I don't fall for that.

CROFTON TOXIC EMISSIONS

MR. BRUCE: I have a question for the Minister of Environment. The residents of Crofton — the area I live in — are greatly concerned about both the quality of air they breathe and the quality of water they find in Crofton Bay. Recently a spill occurred in Crofton Bay, and I asked the minister to launch a full investigation into that spill. Can the minister tell me whether that investigation has been called for?

HON. MR. REYNOLDS: I thank the member for advising my office a little over a week ago of some accusations. I've asked my staff to have a full and independent investigation. I would hope we will be able to get back to him very shortly.

MR. BRUCE: Also, Mr. Minister of Environment, I have called for a full analysis of the air quality in the area. We're greatly concerned with the air that we breathe. The residents would like some assurance as to the quality of air — just what is there. I would ask the minister whether or not he and his ministry would consider a full analysis of the air in the Crofton community.

HON. MR. REYNOLDS: I thank the member for another good question. He can be assured that in our investigations that are taking place we will investigate all the aspects he has mentioned. He knows that this ministry has brought in the toughest regulations in all of Canada towards pulp mills. We're going to enforce those regulations as best we can and as quickly as we can.

FUNDING FOR WOMEN'S CENTRES

MS. MARZARI: A question to the Minister Responsible for Women's Programs. Will the minister please talk about her responsibility for women's centres in this province? She has promised it. She has suggested she is responsible, and the provincial government does have a responsibility. But now Port Alberni, Williams Lake, Campbell River and Fort St. John have been closed, and Quesnel and North Vancouver are on their way to closing by the end of this month.

The clock is ticking, Madam Minister. When and how are you going to fund those women's centres? I'm talking about emergency funding here. I know you have a committee; I know it's working. Where is the emergency funding?

HON. MRS. GRAN: The emergency or interim funding must come from the federal government. My committee has a mandate to come back within the next six weeks with recommendations for cabinet on how best to deliver women's programs in communities.

MS. MARZARI: Madam Minister, emergency funding generally comes from the source of government closest to the centres. That happens to be the provincial government, and it is the provincial government, in your name, that has suggested we have a responsibility. Emergency funding means provincial funding. Do you seriously believe the federal government will come up with emergency funding for the remaining 18 centres that might close?

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PROPOSED GAS DRILLING

MR. PETERSON: Mr. Speaker, I have a question for the Minister of Energy, Mines and Petroleum Resources.

My constituents are very alarmed by the potential environmental and safety hazards which may arise as a result of proposed gas drilling in the Fraser Valley. Part of this alarm results from some extremely provocative comments which have been made on the subject by the member for Kootenay (Ms. Edwards).

Mr. Speaker, will the minister assure this House and my constituents that no drilling permits have been issued or, in fact, will be issued unless all legitimate environmental and safety concerns have been satisfactorily addressed?

HON. MR. DAVIS: Mr. Speaker, I can assure the hon. member and the House that no drilling permits have been issued. None are likely to be issued for some months. None will be issued until the public in the area is fully satisfied that the operations will be safe, quiet and in the public interest.

MR. PETERSON: Supplementary, Mr. Speaker. What assurances can the minister provide to this House that the public's concerns will be fully and impartially addressed in your ministry's review process? What steps has the minister decided to take to ensure that Fraser Valley residents will be fully informed concerning the safety and environmental implications of any drilling project which could, in fact, possibly be authorized?

HON. MR. DAVIS: Mr. Speaker, any significant energy project — certainly one of any size or concern to a large number of people — is subject to a review process. The smaller ones are exclusively in-house between ministries. But if there is a mounting public concern in the Fraser Valley, I would have no hesitation in recommending to my colleagues that we appoint a special inquiry commissioner and have a public review of the matter.

NEW DEMOCRAT PRESS RELEASE

MR. SIHOTA: First of all, Mr. Speaker, I have a question for the Premier (Hon. Mr. Vander Zalm). Yesterday in question period he referred to a press release dated April 4 which he said that I had obviously written, and which made reference to the word "sleazy." I know of no such press release. I wonder if the Premier would be kind enough to table that press release in the House.

HON. MR. VANDER ZALM: Mr. Speaker, I did give a wrong date apparently, and I apologize for the mix-up on that and the confusion perhaps. But yes, I did make reference to a press release, and I certainly would have no hesitation to table the press release. If there's any doubt about what was said in the press release, it will clarify this for the member opposite. It also includes my comments written across the top.

MR. SIHOTA: Mr. Marson submitted his report with respect to the GO B.C. fund to the government on December 12, 1989, and it was made public on February 28, 1990. Could the Provincial Secretary please explain the delay in presenting that report?

HON. MR. DIRKS: Mr. Speaker, I'm pleased to stand up in this House and answer questions concerning GO B.C. because it is a great program. What we wanted to ensure, between the date that report was turned over to me and our release, was that we had looked at it very thoroughly and studied it to see how we could implement the recommendations in that report and come forward with a very positive package of improvements that could be made.

MR. SIHOTA: A supplementary to the Provincial Secretary. How was it that the Provincial Secretary came to learn that the RCMP had wanted to lay charges with respect to his predecessor and arising out of that report? How did you come to realize that?

HON. MR. DIRKS: Obviously the member opposite doesn't realize where my duties begin and where my duties end. I am the Provincial Secretary, and I believe he should be directing that question to another minister.

MR. SIHOTA: A supplementary question to the Provincial Secretary. You released Mr. Marson's report on February 28, 1990. Why did you not disclose at that time that a recommendation had been flowing from that report to lay charges against your predecessor?

HON. MR. DIRKS: Again, I would remind the member opposite that I am the Provincial Secretary. I don't make those kinds of recommendations. He ought to know that as a practising lawyer, I believe.

FERRY SAFETY

MR. LOENEN: Mr. Speaker, I have a question to the Minister of Transportation and Highways. The question concerns the fact that all of us were recently much saddened by the fact that we had a fire on board a Norwegian ferry and that many lives were lost. We now have reports that some of the safety equipment was hopelessly inadequate and that there were inadequate fire alarm systems, sprinklers and smoke detectors.

The question is: since we have one of the largest ferry fleets in the world, can the minister give some assurance to the residents of this province that indeed our safety equipment aboard our ferries is much better?

HON. MRS. JOHNSTON: I am pleased to stand in the House today and respond to that question, but I guess the surprise I have is that it came from someone from the lower mainland. I was expecting it

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discussed with the public before the boundaries are legislated. Your annual report, Mr. Minister. Why did you not follow the mandate as you laid it out in your own annual report?

HON. MR. MESSMER: I would assume that my colleague is against parks in British Columbia. I think we're very pleased to be adding possibly some 7,000 acres to the 13.5 million acres that we're custodians for, for parks in British Columbia. I look forward to the debate in the House to decide whether or not you as well as us are in favour of parks.

MR. BRUCE: I have a question for the Minister of Forests in respect to the Carmanah. Approximately a year ago I put together an ad hoc committee made up of representatives from local government and other portions of the forest industry to hear from the people of Cowichan-Malahat what they thought should occur in the Carmanah. We drew together a series of recommendations, one of which was the establishment of an advisory board. I'd like to know from you, Mr. Minister: will this advisory committee you're suggesting have any teeth, or will it simply be a rubber-stamping body?

HON. MR. RICHMOND: To answer the member's question most succinctly, we will establish a committee, and the committee will be of the choosing of the people in the local area: the regional district, Port Alberni and North Cowichan. Those people will decide who will be on the committee, and we will listen to them — rather than, as the Leader of the Opposition.... He said he listens to people and then he looked into the camera and said: "Watch my lips. We will not log the Carmanah."

MR. MILLER: Talk about rubber stamps. Back to the Minister of Forests. The minister said in his release that it was up to MacMillan Bloedel to decide if jobs were going to be lost. Isn't it the government's responsibility to determine that we get the most from our Crown resources in terms of jobs and economic benefits? Why are you leaving it up to MacMillan Bloedel to tell the government what's going to happen?

HON. MR. RICHMOND: I don't know what the member has been reading. They seem to be able to put their own interpretation on anything. All you have to do is read their latest press release, and you can see they put their own interpretation on anything.

I said I could not determine how many jobs MacMillan Bloedel is going to cut or add to their company at any given time. The people of British Columbia have a right to know that when we preserve a valley like the Carmanah — and it should be preserved — there is going to be a cost. Unlike many people who might live in some kind of a dream world over there, there is a cost to these decisions. We don't mind the cost in saving the Carmanah, but the public has to know what that cost will be. The cost isn't in numbers on a piece of paper, Mr. Member from Vancouver–Point Grey, where you live in comfort in your bungalow in Point Grey. They're not little numbers on a piece of paper. These are real people in Port Alberni and Cowichan.

JOB TRAINING OFFICE CLOSURE

MR. ZIRNHELT: I have a question to the Minister of Advanced Education concerning job training standards. At a time when the Cariboo faces significant expansion of economic activity and industrial development, can the minister tell us why he's decided to close the Williams Lake job training office, forcing more than 250 apprentices in the Cariboo-Chilcotin area to rely on a computer terminal for important support services?

MR. SPEAKER: How refreshing to get a question completely in order.

HON. MR. STRACHAN: It did draw an incorrect conclusion. I thank the member for his question. I'll take it on notice. There is some technical detail I'd like to provide to give you a full answer.

GO B.C. GRANTS

MR. SIHOTA: I have a question to the Provincial Secretary, further to what I asked him yesterday. On February 27, 1990 the Provincial Secretary released Mr. Marsón's report on the GO B.C. grants. The question to the minister is this: at the time, were you aware that the RCMP had recommended that charges be laid against your predecessor?

HON. MR. DIRKS: I listened to these same questions yesterday. I thought about it last night, and I really didn't know whether I should apologize to the member, because he seems to have some problems. I heard him about two weeks ago on television saying that he was unaware of an event that was going on in his constituency. This event, I found out, actually involved over 700 volunteers and over 50 organizations in his community, yet he was unaware of it.

I was going to apologize to him for not knowing, but obviously after being in this House and watching the government for three years, he still doesn't understand what the Provincial Secretary does.

MR. SIHOTA: Mr. Provincial Secretary, you seem a little incapable of being able to answer a very basic, simple question. So let me ask you one more time. On the day you held your press conference, February 27, did you or did you not know that the RCMP had recommended laying charges against your predecessor? That's the question. Answer it.

HON. MR. DIRKS: Again I would have to say that matters.... I checked the records last night very closely. In the Ministry of Provincial Secretary we don't employ one RCMP, so obviously you're directing your question to the wrong minister.

MR. SIHOTA: To the minister. Did you or did you not know on the day that you held your press conference that the RCMP wanted to lay charges against your predecessor? Did you or did you not know that fact?

HON. MR. DIRKS: Mr. Speaker, I guess I have to tell the hon. member opposite that if he wants a question answered in regard to legal matters, he should direct that question to the Attorney-General (Hon. Mr. Smith).

MR. SIHOTA: The minister is not answering the question. He is being evasive. The only conclusion that I can come to is that he knew and he was covering it up. I'll give him a chance to say that that is not a correct conclusion. Let me ask him once again.

Mr. Minister, did you or did you not know, on the day that you held your press conference in February, that your predecessor had been investigated by the RCMP and that the RCMP had recommended laying charges? Were you or were you not aware of that fact on that day?

HON. MR. DIRKS: Mr. Speaker, in order to short-circuit this whole circus, I refer the question to the Attorney-General.

HON. MR. SMITH: Mr. Speaker, in answering the question, I ask leave to table this correspondence in the House, because I intend to refer to it. [2:30]

Leave granted.

Ministerial Statement

GO B.C. GRANTS

HON. MR. SMITH: The situation that we see ourselves in here in British Columbia involving this matter that is raised frequently — and I might add for political reasons — by the member for Esquimalt-Port Renfrew is a matter of some considerable and serious concern and should be to all of us. When I refer to this correspondence, I think it will become clear to all as to why that is. But in beginning I may say that the reason I refer to the political efficacy of what is going on is that in a restaurant on the opening day of this assembly I had the privilege of sitting next to the member's table, at which I heard him brag to the people he was seated with that it was his intention to keep it alive, at least by the process he intended and suggested he would undertake on April 19. No clearer statement could have been made of the purpose here.

Mr. Speaker, on March 26, following a press conference convened by the Leader of the Opposition, I did direct to the Leader of the Opposition a letter which, in part, said the following:

> "I've had the opportunity of considering your remarks at the March 20 press conference. You stated that you believe there to be sufficient evidence to warrant the laying of charges. One of a number of respected and experienced counsel who, following a review of all available material, has advised otherwise is Mr. John E. Hall."

And then his address is given. The key question is the following.

> "Mr. Hall has been requested to be available to review and advise on any material, evidence, potential witnesses and whatever you now bring forward so that a reconsideration of the decision reached in this matter by senior officials in the Ministry of Attorney-General can take place."

The Leader of the Opposition was asked to be in touch with Mr. Hall. He was asked, as well, to take to Mr. Hall any of the defence counsel who — it was claimed — had advised on this matter or Crown counsel who it was claimed had been consulted.

Mr. Speaker, it was requested that Mr. Hall would avail himself for one week from March 26. I am advised by Mr. Hall's office, as of today, that no such consultation has taken place.

In response to that request, on April 4, I did receive a letter from the member for Esquimalt-Port Renfrew. In part, that letter said.... This is the part that I think is the most odious in the extreme. The request was as follows: "I therefore invite you to provide me with this information...(1) the RCMP report delivered to your ministry...."

Mr. Speaker, let every member in this House and in this province reflect on what that means: a request to the Attorney-General of the province by someone sworn to uphold the law to release a police file to an individual not authorized to have it. That, Mr. Speaker, is a corrupt practice.

I have responded to that letter today with the following:

> "It is the established role of Crown counsel in British Columbia to review the results of the investigation, together with the police recommendations, and to determine, in accordance with well-established policy, whether charges are appropriate. This policy requires that Crown counsel only proceed with cases where they are satisfied that there is a substantial likelihood of conviction and it is in the public interest to proceed with the prosecution.
>
> "It is imperative that the justice process operates free from even a mere perception of political interference. Practice and convention in this province have long excluded the Attorney-General from personally demanding, receiving or reviewing reports to Crown counsel or criminal justice files. I agree with that practice. In my view, the public must be protected from any Attorney-General interfering in the charging process by examining files and reviewing charging decisions.
>
> "The only possible reason for your requests to date is the inspiration directed by political considerations. I will not inject political considerations into the process. Indeed, at all costs I will protect the process from those who would.
>
> "It is my view that the professionalism and independence of the counsel involved, and not the review process you propose, answer whether this matter was properly handled."

You cannot separate the integrity of the process from the integrity of the individual, as this member seeks to do.

> "Fundamental to our liberty is the fact that no citizen should ever have to worry about any Attorney-General releasing files to anyone not authorized to have them.
>
> "In closing, your request is denied for the very sound reason that it is unprincipled and, if granted, would set a precedent corrosive of, if not corrupting to, the administration of justice in British Columbia."

Let it be said and understood very clearly that the integrity of our system is dependent upon three things: the independence of the office; the ability, competence, experience and integrity of the people who serve it; and it is dependent upon the Attorney-General's obligation to protect that office from outside political pressure or any other ulterior pressure.

When members of this Legislature, members of the practising bar of British Columbia, stand and use deliberately that criminal justice process in the administration of justice in British Columbia for admitted political ends, then we are in serious trouble indeed.

When a leader of the opposition, or a leader of any other party, is prepared to condone a system that would allow and invite the Attorney-General to release files to people not authorized to have them, then we are indeed inviting a corrupt system, and I would invite that leader to stand up and say he does not condone that practice.

In our system, the investigative people look at information and put evidence before the Crown, and they do indeed from time to time make recommendations. And then the Crown makes the decision on whether or not to proceed. That system must not be interfered with. That system protects citizens, and it protects the administration of justice. It should not be dealt with differently in the case of one individual than in the case of the other. It should be dealt with evenhandedly.

The fail-safe on that system is this: the police or any other investigative agency are entitled — as a right at any time if they do not agree with the decision of Crown — to swear the information themselves. Indeed, they could hire someone to prosecute the matter if they so wish. The police can do that at any time. The fact that they do not in British Columbia — that they agree with the integrity of the system — speaks well of the system, the police and the people who administer it.

Mr. Speaker, I am not prepared to let these members, by inference, try to sully the reputation of people like Mr. Hughes and Mr. Stewart and others.

Interjections.

MR. SPEAKER: Order, please. I will hear one point of order at a time. The opposition House Leader rose on a point of order.

MR. ROSE: We are all very interested in what the Attorney-General has to say — especially the claque of desk-pounders behind him. I'd like to point out that in my opinion imputing motives — as he did impute political moves on the part of certain hon. members — is not part of our traditions in this House.

If I might cite some relevant authority, the Attorney-General has gone well beyond the propriety of ministerial statements, which are supposed to be brief, precise and specific about the administration within their department, and not to go on some great meandering far and beyond the bounds of a ministerial statement. This has happened before in this House, and it's got to stop.

MR. SPEAKER: The bell had terminated question period; however, I recognized the Attorney-General. The Chair is at fault in not having recognized the Attorney-General in the manner of making this matter a ministerial statement. It has clearly gone beyond the response of question period or beyond the response that would normally be given a question. The matter is being treated as a ministerial statement, and the appropriate reply will be allowed by the Chair. I would ask the Attorney-General to continue. You may take into account the remarks of the opposition House Leader if, in fact, you did impute the improper motive.

HON. MR. SMITH: It matters not to me whether it's considered an answer to a question or a ministerial statement. What must be out is the truth about what is going on here, and this is the forum in which to do it.

I want to restate that the process in British Columbia is filled with integrity. The people in it are filled with integrity and are entitled to be treated thusly. The failsafe on the system we have in British Columbia is that any citizen, including the police, can swear information if they have it.

I have invited the Leader of the Opposition, who made a very serious allegation at a press conference, to put the information he has and the people he consulted before Mr. Hall, who is one of the most outstanding counsel in this country — the person who prosecuted the McKitka case to which the Leader of the Opposition referred in that press conference. I asked him to do that for the reason that he might reconsider the decision. That has not happened. So, Mr. Speaker, I put this material before you and before this House. I say simply to the member for Esquimalt–Port Renfrew that if you have information, sir, then appear before a justice of the peace and swear it. Do not politicize even that process.

I say to the Leader of the Opposition: please stand in this House before all citizens and repudiate and state that you do not condone a system that would require and request the Attorney-General of British Columbia to disclose police files about any citizen to people not authorized to have them. That system, sir, is corrupt, and you know it.

Interjections.

MR. SPEAKER: Before recognizing the member for Esquimalt–Port Renfrew, I would like to ask the Attorney-General to review, at his convenience, the process for making ministerial statements and the bounds as established by a rules committee of this House in terms of the scope and parameter. I believe you will find that you have extended your remarks beyond the regular bounds of the ministerial statement.

MR. SIHOTA: I appreciate those comments, because the Attorney-General is obviously not prepared to pay homage to the rules and traditions we have in this House in relation to ministerial statements, and he went beyond those bounds.

Interjections.

MR. SIHOTA: I was going to be relatively brief in my comments, but if the members want to chatter over there, I guess I'll have to take a little longer than I anticipated.

The comments made by the Attorney-General were somewhat sanctimonious, and he protests a little too much. In the course of his statements, as he tried to wrap himself around and embrace a number of legal principles...

[2:45]

Interjections.

MR. SIHOTA: I guess this is the kind of behaviour we're beginning to expect from that side of the House, Mr. Speaker.

...and as he tried to talk about a process that we have, the minister carefully avoided the issue at stake in this instance.

Let me put that issue directly before you, Mr. Speaker, and all members of the House so they understand what the issue is. The issue is very straightforward: it is whether, in cases involving the potential criminal wrongdoing of a minister, those decisions should be made privately and quietly in the back rooms of the office of the Attorney-General or whether they should be made openly and publicly in court where justice can be seen to be done.

The reason we made the request for the Attorney-General to review this matter and ask that the matter be referred to court without us having to take the action we have said we will take — and which we will indeed take if the posture of the Attorney-General doesn't change — is that we felt it vital that in this instance justice be seen to be done. Too long has this government preferred to do its work in the back rooms and not openly.

That request was made in the context of a number of facts which I'll talk about now. The first was that it had come to my knowledge that the RCMP had recommended in this instance that charges be laid. I found it most disturbing that in the months of January, February and the early part of March certain ministers opposite, including the Premier, chose to travel around this province making reference to an RCMP investigation as if to suggest that that investigation in some way excused the behaviour of the former minister; had taken a look at what he had done and had concluded that there was no breach of criminality.

This government, through its ministers — the Premier, the Attorney-General, the Provincial Secretary and the former minister — made reference repeatedly and publicly about the RCMP investigation. But for some reason, they made a decision not to disclose....

MR. SPEAKER: I can only hear a point of order at this point.

HON. MR. SMITH: On a point of order, Mr. Speaker. I want to give notice that I will be raising a matter of privilege at the end of this statement.

MR. SPEAKER: The Chair is so advised. Just before we continue, everyone has a copy of MacMinn's rules. I would refer those members who wish to participate in the debate to have a look at pages 49 and 50 and ensure that they're within the scope of the debate of reply.

But since the original statement was as broad as it is, I'm listening carefully to the remarks from the member for Esquimalt–Port Renfrew. Would the member please continue.

MR. SIHOTA: Mr. Speaker, as I was saying, public utterances were made by members opposite, including the Premier of this province, in reference to an RCMP inquiry. Yet a decision was made not to disclose the fact that the RCMP had recommended that charges be laid in this instance.

I knew that at the time, but the reason why — and this gets to the whole matter of how this came up today in the House — we are asking questions, as we legitimately should in a democracy, is because we were aware of those facts, and we have seen what ministers have had to say. Today, regrettably, the Provincial Secretary chose not to answer questions with respect to whether or not he knew about the RCMP investigation.

Now I want to tell you, Mr. Speaker and other members of this House, that we will be unrelenting in our desire to ask those questions over and over again until — to use the Attorney-General's words — we get to the truth of the matter.

Let me put it on the record in advance, as we did in the Knight Street pub affair, what we intend to ask. We want to know: Was there a political damage control strategy developed here? Who developed it? I want the minister to know now so that he can prepare for the set of questions we will be asking on those issues.

MR. SPEAKER: At this point I have to stop the member. I referred earlier to the *Journals* and MacMinn's ruling on the scope of answers to ministerial statements. Essentially it says as follows: "...will confine himself specifically to the points raised by the minister."

I can foresee a time when there will be a debate on this subject: either in committee, which the Chair will not be aware of, or at some other time, but not during ministerial statements. I must ask the member to confine his remarks in reply to the ministerial statement made by the minister to the scope of subject that the Attorney-General left for you. Any other notice that you wish to give of other debate that you wish to enter at another time.... There's another time for it, but not right now. Please continue.

MR. SIHOTA: It has subsequently come to our attention that it wasn't once but twice that the RCMP asked that charges be laid. They asked for a review of the original decision. That's a seldom used process and I think it flows — if my memory serves me correctly — from recommendation 61 of the recommendations that Mr. Hughes put forward some time ago. To the best of my knowledge, it was one of the first times that process had been used.

As a consequence...

Interjection.

MR. SIHOTA: The Attorney-General is going to have his chance.

...it seems to me that it is wholly appropriate for us to raise these matters, and it is wholly appropriate for us to consider the action that we've outlined with respect to an information.

It is also, Mr. Speaker, I would submit, not out of the....

AN HON. MEMBER: Are you still here?

MR. SIHOTA: Do you want to enter into this debate? You will have your chance.

Mr. Speaker, it is not unusual for counsel on a criminal matter.... I understand that the Attorney-General has not had much experience in our criminal courts and that he does not realize, obviously, that it is not unusual for police reports and particulars to be provided to counsel with respect to the details of a police investigation. That is what our request was all about.

The Attorney-General cunningly has chosen to quote only one aspect of the letter that we sent to him and has used that to frame his argument. I would like to put the letter that I directed to the Attorney-General in its proper context. Let me read out what I wrote, starting on page 2:

"Since you have chosen not to prosecute Mr. Reid, I am left to assume that you have evidence exculpating Mr. Reid. I take it that evidence was somehow overlooked or ignored by the RCMP. If so...."

MR. SPEAKER: Order, please. I have a point of order.

HON. MR. REYNOLDS: I would remind the hon. member that he does not use members' names in this House. He's been here long enough to know that.

MR. SPEAKER: The interjection is in fact quite in order. I would have hoped that all members, with the exception of the two who have most recently arrived, would have learned that rule, and they already appear to have learned it. Would the member continue.

MR. SIHOTA: Sorry, Mr. Speaker. I'm just quoting from the letter, and in the past I've seen members, when quoting from letters, actually refer to the name. But fair enough.

"If so, I believe it is in the public interest to know what that evidence is. I therefore invite you to tell me."

And I want to issue that invitation again to the Attorney-General.

Second, let me also go on to quote the next paragraph:

> "I also think it is incumbent upon you to advise me as to what public interest considerations were applied in this case. I believe it is incumbent upon you to assure the people of British Columbia that justice appears to have been done."

That, Mr. Speaker, touches on the other two issues — the one I've referred to, that the Attorney-General chose to ignore, and the second one, which is a consideration in deciding whether to proceed with a criminal conviction.

The next paragraph says:

> "I therefore invite you to provide me with this information. In addition, I would be grateful if your office could forward to me the following material so that I may have a clear idea as to why and on what basis the RCMP recommendations were rejected."

Then the request was made.

The Attorney-General knows full well that his ministry, on previous occasions....

Interjection.

MR. MILLER: Say it louder. Get out of the gutter.

MR. SIHOTA: I think it best I didn't hear that one.

I can quote to the Attorney-General other cases of which his ministry has provided us the full files in the past. To suggest that that would be a violation of his duty is incorrect.

Interjection.

MR. SIHOTA: I'm not going to transcend to that level, Mr. Attorney-General.

Let me summarize then. Firstly, it is wholly appropriate for us to raise these matters both in court and within the legislative chamber, as much as the government may find embarrassment in these matters being raised.

Secondly, let me tell the Attorney-General — and make it very clear to this House — that it is imperative that justice be seen to be done. The government is currently under a cloud of suspicion with respect to whether or not justice has been seen to be done in this case.

I would invite the Attorney-General one more time to reconsider the handling of this matter to date and take the appropriate action and refer this matter to the courts where the public can openly see the merits of both sides of the dispute. A court — and not his office — could then properly make a determination as to the guilt or innocence of the minister involved.

[3:00]

MR. SPEAKER: First of all, hon. members, before continuing, let me just point out that when we deal with matters of ministerial statements, the Chair is constrained. When a minister goes beyond the bounds of normal ministerial statements, then the answers can go beyond the bounds of normal ministerial statements.

There is perhaps a better forum, in the orders of the day and the proceedings of this House, to have such a discussion. However, it has proceeded to this point. There is no further discussion on the ministerial statement. That is established in our standing orders. However, the Attorney-General did invite the Leader of the Opposition to make a statement, and if he would like to make a statement....

The Leader of the Opposition is standing. May I ask the member under what pretext he is standing?

MR. HARCOURT: I am standing under the rules of debate, where it says that in the case of ministerial statements, it is usual to permit the Leader of the Opposition to make some remarks thereon.

Secondly, I was invited by....

MR. SPEAKER: That is appropriate. You are quite correct. It is appropriate for the Leader of the Opposition or his designate to make some remarks.

When the member for Esquimalt–Port Renfrew stood in his place to respond to the remarks made by the Attorney-General, the Chair takes it on the assumption that he is operating as the spokesman for your side of the House, and there will be only one.

However, you were invited to make a response, and if you wish to make a response, leave will be required at this time for that to proceed.

MR. HARCOURT: I would seek leave to respond.

MR. SPEAKER: Could I have silence please, so I could ask the question. Shall leave be granted?

Leave granted.

MR. HARCOURT: This is an important matter. It goes not just to the integrity of the rule of law and our legal system, but of our democracy too. The Attorney-General invited me to rise and speak in this matter, and I intend to do just that.

I may say that the release of police files on citizens is not the issue here, as the Attorney-General frames it.

Interjections.

MR. HARCOURT: The Attorney-General invited me to respond, and I intend to do that, however long it takes in the face of the braying that I hear from people who are braying on the democracy and the rule of law that we are proud of. If you want to continue to do that, please be my guest. You are only diminishing yourselves before the people of this province, so be my guest, if you want to behave that way.

I was asked about the matter of police reports, and I know that the Attorney-General does not have a great deal of experience in appearing in criminal courts. I have represented 400 to 500 people before the courts of this province in criminal trials, and I may say....

Interjections.

MR. SPEAKER: Order, please. If members can't restraint themselves, will they please excuse themselves from the chamber. We're not dealing with the regular, normal debate. I would like to hear the response from the Leader of the Opposition, because the Chair may be called upon at any time now to make a decision. I'm having some difficulty hearing all the remarks from the Leader of the Opposition.

MR. HARCOURT: I may say, Mr. Speaker, for the edification of members of this House who are prepared to listen, that particulars of a case are made available from police reports every day to lawyers who are acting for people. This is done so that the administration of justice can proceed and so that our court system can work.

The Attorney-General also made reference to this matter being odious to him, and I can tell you that indeed this is an odious matter. It is one where justice must be done. We have an ex-Provincial Secretary who did wrong, was caught and resigned. It's very clear that that train of events happened. It was because of the possibility of creating a monopoly for his campaign manager and best friend — not just in White Rock but in Surrey and throughout this province.

The Attorney-General impugns my motives. I will tell him that my motives are very clear. It is because of my respect for the rule of law that I became a lawyer. It is because of my respect for our democratic system that I became an elected member of this Legislature. And it is from 18 years of being an elected political leader in this province that I have a great deal of respect for open bidding, for fair tendering and for members not misusing their office for their friends and insiders to the detriment of the citizens of this province.

The Attorney-General can huff and puff and put the people of British Columbia off the trail of the ex-minister who got caught. We will not rest until the truth prevails and justice is done. We will not rest until there is an introduction of proper conflict-of-interest laws in this province, laws that are not guidelines set by a Premier who then interprets them but strong laws that have an independent arbiter to decide whether a member has broken the laws of this province.

I would feel far more confident about the Attorney-General's concerns for justice if he would stand up in this House and issue a ministerial statement about a strong conflict-of-interest law, about the underfunding of the legal aid system, which I was one of the founders of. . . .

MR. SPEAKER: Order, please. The Leader of the Opposition has the floor in response to an invitation by the Attorney-General on a rather specific point brought forward by the Attorney-General. Between the interjections, I am able to hear what the Leader of the Opposition has to say. I would suggest to him and to the House that his discussion is now beyond the scope of the ministerial statement made by the Attorney-General and the response invited. Several items have been canvassed that were not discussed in the Attorney-General's ministerial statement.

MR. HARCOURT: Thank you, Mr. Speaker. I will conclude by referring to page 3 of the Attorney-General's own letter to me:

> "An Attorney-General must not, except in the clearest and most compelling of exceptional circumstances, become involved in a review of charging decisions. Intervention by the Attorney-General is only appropriate in instances such as when the integrity of ministerial officials has been brought into question."

This is exactly such a situation. It is exactly in those circumstances that we now request the Attorney-General respond by doing the right thing and responding to the request that we have put forward.

MR. SPEAKER: Before the Attorney-General starts, the Attorney-General advised the Chair that he wished to bring forward a matter of privilege. I will review for members what that involves: stating the matter briefly, allowing the Chair to consider the matter as stated briefly, and being prepared to bring forward the motion at the appropriate time should the Chair find that a matter of privilege does occur.

HON. MR. SMITH: Mr. Speaker, the privilege to which I aver is this. The member for Esquimalt-Port Renfrew (Mr. Sihota) said that the Attorney-General had been involved in a backroom deal in relation to this matter of the charging process we are discussing.

Mr. Speaker, very simply put, when the Attorney-General of the province — this province or any other jurisdiction — is accused of being involved in a backroom deal, it necessarily follows that his privilege as a legislator has been impugned and that the office he serves has been attacked in the most fundamental of ways. That is the first point.

The second, Mr. Speaker, is this. The member for Esquimalt-Port Renfrew said that the Attorney-General talked about police investigations on more than one occasion. That statement is false. The Attorney-General, since being named Attorney-General, when asked with respect to all police investigations, has stated on every opportunity that he does not discuss police investigations, whether they are taking place or not. That applies in this case as well.

Mr. Speaker, as a matter of privilege, I would simply ask that those comments be withdrawn.

MR. SPEAKER: It is not correctly a matter of privilege. The member can rise under a number of standing orders. If the member wishes to ask for a withdrawal of an incorrect statement that was made, then that is the way we'll deal with the matter. If you wish the Chair to rule on it as a matter of privilege, then the Chair will rule on it as a matter of privilege. I will leave it to your guidance.

HON. MR. SMITH: Mr. Speaker, I would be prepared to accept a withdrawal. If that is not forthcoming, then I would indeed ask you to rule on it.

MR. SIHOTA: Quite simply put, Mr. Speaker, in reply to both the points the Attorney-General made, I would have had to have said it to be able to withdraw it. I did not use the words "backroom deal" at all.

Interjections.

MR. SPEAKER: Order, please. The member will continue.

MR. SIHOTA: My understanding and recollection are that I referred to the issue at stake here; namely, whether or not these matters should be resolved in court or in the back rooms of the Attorney-General's office. I made no reference to a deal.

With respect to the second matter, I have before me a quote. . . .

MR. SPEAKER: I only have one question for the member: does the member wish to withdraw? If the member doesn't wish to withdraw, I will deal with the matter as a matter of privilege.

MR. SIHOTA: I didn't say it. No, Mr. Speaker.

MR. SPEAKER: Thank you, hon. member. Then the Chair will deal with the matter as it was brought forward — as a matter of privilege — and bring back a decision at the appropriate time.

MR. ROSE: Mr. Speaker, I realize you have had a trying day, but there are definite little recipes about how we deal with privilege: the first possible moment, written information to be read and a motion to be submitted. Are you going to ask for that in this case?

MR. SPEAKER: The member can rest assured that the whole process will be followed. The process for a matter of privilege, though, is that the matter should be stated briefly, with the Chair to consider the matter and to bring back a ruling. I have just such a ruling from a matter of privilege brought forward yesterday. If we've concluded this piece of business, I propose to proceed with that.

AN HON. MEMBER: Agreed.

MR. SPEAKER: Hon. members, yesterday afternoon at the 2 o'clock sitting, the Minister of Transportation and Highways (Hon. Mrs. Johnston) rose on a matter of privilege relating to remarks made by the second member for Victoria (Mr. Blencoe) during proceedings in the House on April 5. The minister stated that she listened to the Hansard tapes which had recorded the interjection in question. The minister was asking at that time that the second member for Victoria make an apology and withdraw the remarks in question. The hon. member did not tender the appropriate motion at the end of her statement of the matter of privilege, and accordingly the matter raised does not qualify under the rules of the House.

Ministerial Statement

GO B.C. GRANTS

HON. MR. SMITH: I seek the floor to make a very brief ministerial statement.

Moments ago the Leader of the Opposition stated that the integrity of ministry officials is in question, in reference to the Ministry of the Attorney-General. I can only conclude, Mr. Speaker, that he is referring to the integrity of the individuals who are involved very much in the decision that was taken. Therefore, Mr. Speaker, because individuals such as the Hon. Ted Hughes, the Deputy Attorney-General of British Columbia; Mr. Bill Stewart, the Assistant Deputy Attorney-General for the province of British Columbia; Mr. Robert Wright, the regional Crown counsel in Vancouver; Mr. Ace Henderson, who is on contract to the Ministry of Provincial Secretary; Mr. John Hall, on retainer to the Ministry of the Attorney-General; and Mr. Richard Peck, on retainer to the Ministry of the Attorney-General.... None of these individuals deserves to have those statements made or implied. If you wish to sully me, then you may feel free. Do not sully people of their integrity.

[3:15]

I therefore advise the House, Mr. Speaker, that I will convene a public inquiry into the process that was undertaken and the competence and the integrity of every single individual who was involved, and I will invite any citizen to seek status at that inquiry to ask the questions they want and to cross-examine anyone else whom they haven't themselves called.

MR. HARCOURT: The Attorney-General is once again going off on a wild goose chase. He totally misconstrued my reference. It is not to his ministerial officials that I am referring, and he won't even stay to listen to this comment. I think it's important that he hear this comment. He's walking out on us now, Mr. Speaker, because he doesn't want to hear the truth on this matter as I put it forward.

I said that the integrity of ministerial officials.... The ministerial officials we are talking about here are with the Ministry of Provincial Secretary, and that is who I referred to throughout my remarks. I have never at any time referred to the integrity of people like John Hall, Ace Henderson, Bob Wright or Ted Hughes — many of whom I have known for my 20 years at the bar and have the greatest of respect for.

For the minister to misconstrue what I said is abominable. I have never at any time referred to the officials in the Attorney-General's department. For the minister to get up now and misconstrue that and to then set up a public inquiry without even staying to listen to what I said — and what I have said from the beginning — is a misuse of the public inquiry process and a waste of taxpayers' money. He won't even stay to hear my explanation and my support for the officials he has in his department. I think that it is another attempt to get away from the very simple truth that the people of British Columbia know will be addressed and has to be addressed. That is that the Provincial Secretary did wrong, he got caught and that justice will be done.

HON. MR. DIRKS: Mr. Speaker, I believe that the Leader of the Opposition just impugned my integrity, and I would ask him to withdraw.

MR. SPEAKER: Order, please. It may clarify matters if the Leader of the Opposition can respond.

MR. HARCOURT: I was referring, as I have throughout my remarks, to the ex-Provincial Secretary. It does not involve the present Provincial Secretary.

HON. MR. COUVELIER: Mr. Speaker at the first business day of this session, I introduced *Public Accounts*. It has come to my attention that, by virtue of a coding error in coding some supplier numbers, volume 2 of *Public Accounts* contains a number of clerical errors. As a consequence, I would like to table today errata to volume 2 of the *Public Accounts* that I tabled for the 1988-89 year.

HON. MR. VANDER ZALM: Mr. Speaker, I would like to table a letter dated today, addressed to the Rt. Hon. Brian Mulroney, PC, MP, Prime Minister of Canada, with respect to the matter which was debated in the House yesterday on behalf of all British Columbians. I table the letter for information.

Orders of the Day

Throne Speech Debate
(continued)

MR. VANT: As the first member for Cariboo, I'm pleased to continue to support this good government throne speech. This government cares about the social and economic well-being of its first citizens. There is a very active Premier's Council on Native Affairs. The throne speech announces the creation of a first people's traditions for tomorrow council to assist in funding native language, heritage and cultural centres.

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 50
DATE [illegible]
KDH

MS. PULLINGER: The minister seems to be skidding off into tangential issues and is unable to answer the question.

In response to local democracy, we in the New Democratic Party are proud to participate in local elections to defend individual liberty and freedom of choice. Is the minister prepared to show leadership and renounce any attempt by friends of this government to deny women access to safe, legal abortion services in Nanaimo or elsewhere?

HON. J. JANSEN: Mr. Speaker, I think I've answered the question. I'm not sure what I have to do in terms of getting through to the other side. The second member for Nanaimo was quoted recently in the paper saying that abortion is a federal issue. I'm surprised that she's bringing it up again in this House as an issue.

As you know, we set up boards in this hospital to manage the affairs of the hospital. I am surprised that the second member for Nanaimo and the Leader of the Opposition would suggest that we should intervene when we don't agree with some of their policies.

SUPPLIES FUNDING FOR DIABETICS

MR. PERRY: Mr. Speaker, I hope the minister will recognize, in answering this question, more of his statutory responsibilities.

Diabetes is a serious, chronic disease that affects somewhere between 100,000 and 150,000 British Columbians. My question is: has the minister finally decided to provide full Pharmacare funding for the supplies required by diabetics to monitor and manage their condition at home?

MR. SPEAKER: The question is out of order, but the minister may wish to answer it.

HON. J. JANSEN: Mr. Speaker, I was going to take the question on notice and indicate that we are reviewing Pharmacare rules. We will respond to the question at a later time.

MR. SPEAKER: A new question from the second member for Vancouver–Point Grey.

MR. PERRY: It's a supplementary, but maybe I'll phrase it as a new question then, Mr. Speaker.

Diabetics now must pay up to $1,800 a year to cover the costs of the supplies they need to monitor their condition. The minister is in receipt of numerous reports from his continuing advisory subcommittee on this issue. Will the minister agree to table those reports in this Legislature so that we can see the information on which he's been sitting for the last two years?

MR. SPEAKER: When the Chair advised the member that a supplemental question was out of order and the original question was out of order, I allowed the member to put the question in the unlikely event that the subsequent question was in order. That didn't come to pass, either. The matter is to be dealt with.

GO B.C. GRANTS

MR. SIHOTA: Mr. Speaker, I have a question to the Provincial Secretary now that he's had a weekend to think about it. Will he advise the House whether he knew, on that day in February when he had his press conference, that the RCMP had recommended the laying of charges against his predecessor?

HON. MR. DIRKS: I gave the answer to that question last week. I guess I have to repeat it. Even after a weekend, the member hasn't done any homework or studying. That certainly is a question he should direct to the Attorney-General (Hon. Mr. Smith).

MR. SIHOTA: We'll come back to the Provincial Secretary a little later on, in terms of questions along those lines.

In this case, the RCMP has recommended that charges be laid against the minister. One of the lawyers looking at it for the ministry did not agree with the view to not refer it to the courts. Now the former minister himself has requested that the charges be laid.

I have a question to the Premier. Will the government now comply with the request of the former minister and lay the charges?

HON. MR. VANDER ZALM: Mr. Speaker, the whole matter is under investigation.

MR. SIHOTA: The public inquiry is now looking at this matter. Let me ask the Premier again, when he refers to the whole matter: is he now saying to the House that the matter of laying charges against the former minister is now under review, again, by the government?

HON. MR. VANDER ZALM: The Attorney-General has explained it for the member a number of times. I'm sure the member is aware that the matter as to process and procedure is being investigated, and a report will be forthcoming. The member has been advised of this; however, we'll advise him again.

MR. SIHOTA: All of us understand that the matter of process and procedure is being investigated by the public inquiry. This issue is not within the terms of reference. I'm sure the Premier has looked at the terms of reference. My question is: given the request by the former minister that charges be laid against him, will the government now comply with that request? Will you acquiesce to the request of a member of your own caucus?

HON. MR. VANDER ZALM: I, too, like many in the House, am aware that some statements were made by a member across the floor about laying charges. I think he said he was proceeding with them on the 19th, so we're all anxiously waiting and watching. In the meantime, the whole matter is under investigation.

MR. SIHOTA: The point the Premier should understand is that his government has the constitutional responsibility and the mandate to lay the charges. If you don't do your job, we'll do it for you. In this case we're asking you: given the fact that the RCMP and now your own colleague have asked that charges be laid, will you comply with his request?

HON. MR. VANDER ZALM: I was just reminded that tomorrow is the 19th. It is with the Attorney-General.

GOLF COURSE DEVELOPMENT ON FARMLAND

MS. CULL: My question is for the Minister of Agriculture. Over 70 golf courses have been proposed for farmland since the minister signed a cabinet order allowing golf course development on farmland. The head of the Agricultural Land Commission, the B.C. Institute of Agrologists and even the minister himself have said they do not agree with golf courses on farmland. Has the minister decided to rescind the cabinet order pending a review before any further golf courses will be permitted?

MR. SPEAKER: The question is out of order.

HON. MR. SAVAGE: Thank you, Mr. Speaker, but the simple answer is no.

MS. CULL: The minister has actually said: "If it's good farmland, it shouldn't be a golf course." How does the minister reconcile this position of his with the order-in-council that he signed allowing golf course development on farmland?

HON. MR. SAVAGE: As the question was out of order in the first place, I believe any supplement to that would also be out of order.

SWARTZ BAY FERRY TERMINAL

MR. LOVICK: I also have a question to the Minister of Agriculture — a very direct question that is indeed in order.

B.C. Ferries wants to expand....

Interjections.

MR. LOVICK: How fascinating! At last they heard something they understood.

B.C. Ferries wants to expand the Swartz Bay ferry terminal onto agricultural land, and wants to do so against the express wishes of the North Saanich council. Can the minister advise us if it is indeed the policy of this government to respect the wishes of the North Saanich council in this matter?

HON. MR. SAVAGE: I'll take that question on notice, since I have no knowledge of that particular correspondence.

MR. SPEAKER: Before we proceed to the next order of business I would like to just review question period.

Question period only lasts for one hour a week, and the Chair is guided by the wishes of the members. But if the questions themselves involve a long preamble and a vaguely worded question, then a long answer with a vaguely worded reply is sometimes in order. The whole House would be better served if all members would review our Standing Orders and the second edition of MacMinn, which clearly points out how questions could be more productively put.

Ministerial Statement

HIGH-SEAS DRIFTNET FISHING

HON. MR. SAVAGE: Mr. Speaker, today I am pleased to bring you a summary of the province's efforts and achievements surrounding the issue of high-seas driftnet fishing by international fleets in the North Pacific.

On July 13 of last year I spoke to you outlining the threat posed by driftnet fishing to our salmon fishery, marine mammals, seabirds, other non-target species of fish — indeed to the entire marine ecology of the Pacific. The government of Canada placed five British Columbians as observers on the Japanese squid-fishing vessels during the summer of '89 to collect scientific-based data on the bycatch. We financed one of those observers.

From July 17 to 19, I hosted, with the Department of Fisheries and Oceans, a North Pacific driftnet conference at Dunsmuir Lodge in Sidney. Experts on marine biology, international law and administration — from Canada and the Pacific states of Washington, Alaska, Oregon, Idaho and California — met with their British Columbia counterparts to pool their knowledge. A close working relationship was established in the conference among delegates.

In October I represented Premier Vander Zalm in Juneau, where an agreement in principle was reached with Alaska's Governor Cowper on the wording of the North Pacific driftnet declaration. And over the next few weeks the governors of Washington, Oregon, Idaho, California, and Hawaii joined us as signatories to this document. The declaration spelled out six realistic, achievable goals to be pursued by the governments of both Canada and the United States. Together we requested that our federal governments increase pressure on Japan to reduce its high-seas salmon fisheries and to find alternative fishing technologies which will impact less strongly on the marine ecology. We asked that Canada, the U.S., Japan and the U.S.S.R. establish a new convention to manage the North Pacific fisheries in the high seas beyond the 200-mile zones established by coastal nations and that they commit the financial and

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 51
DATE: Aug 27/90

Friday, May 18, 1990

1185 Highrock Place
Victoria, British Columbia

DELIVERED BY FAX TRANSMISSION

Commissioner Stephen D.Owen
Discretion to Prosecute Inquiry
Ste. 202, 1275 West 6th Avenue
VANCOUVER, British Columbia

Dear Sir:

I am, of course, aware that your public hearings are scheduled to commence next Tuesday morning, May 22nd. At that time, I understand that you intend to begin taking evidence from a number of witnesses from the Ministry of the Attorney General, the Attorney General himself, counsel retained by that Ministry and members of the Royal Canadian Mounted Police; most of whom were involved in the decision-making process relating to the conduct of William E. Reid and a "GO-B.C." grant to the Semianmoo House Soicety.

I therefore believe that it is prudent and desirable, if not incumbent upon me to advise you that I have earlier today appeared before a Justice of the Peace sitting in the City of Vancouver and sworn an information alleging that William E. Reid committed an offence pursuant to section 122 of the Criminal Code of Canada as a result of his conduct in relation to that government grant.

In order to consider the material that was presented to him, the Justice of the Peace has adjourned his hearing of the matter until May 28, 1990 at which time he will deliver his decision pursuant to section 507 of the Criminal Code as to whether Mr. Reid should or should not be compelled to appear in answer to the charge against him.

I am taking the liberty of delivering a copy of this letter to Commission Counsel, Bryan Williams Q.C. in order that he might, at the earliest opportunity, consider what advice he may wish to offer you as a result of these events.

Respectfully yours,

Moe Sihota

c.c. Bryan Williams, Q.C.

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT #. 52
DATE: Aug 27/90

1185 Highrock Place
Victoria, British Columbia

August 13 1990

Discretion to Prosecute Inquiry
#202 - 1275 West 6th Avenue
Vancouver, British Columbia
V6H 1A6

Attention: Bryan Williams, Q.C., Commission Counsel

Dear Sir:

I understand that the Commissioner Stephen Owen will endeavour to recommence this Inquiry starting Monday, August 27 and, except for final submissions by counsel, hopes to complete his public hearings into the matter that same week.

The purpose of my letter is to request from the Commissioner, through you as his counsel, an opportunity to appear during those hearings.

As both you and the Commissioner are aware, I have an ongoing and serious interest in the administration of justice in my caucus capacity as the Opposition critic assigned to Ministry of the Attorney General. In addition, of course, I became a private informant in the matter of William E. Reid.

As a result of my involvement in these matters, I have identified a number of issues that I believe must be addressed if public confidence is to be maintained in the integrity of the administration of justice.

This Inquiry, therefore, gives the people of British Columbia an opportunity to consider a variety of reforms and institutional changes that may be desirable as well as necessary. It is primarily in this area that I would hope to contribute to the work of the Inquiry and any recommendations generated by it.

I therefore look forward to hearing from you.

Sincerely yours,

Moe Sihota

PROSECUTE INQUIRY
EXHIBIT # 53
DATE: Aug 27/90

Press Conference - March 20, 1990

2:30 p.m. - Press Theatre - RE: REID

HARCOURT: In the last month or so since the Auditor General/Comptroller General issued their report on the Bil Reid affair, its become clear that the Government is determined to stonewall on this matter. As a matter of fact, Bill Reid himself indicated that the investigation of the grant was superficial. When I saw what was enfolding, I became very alarmed and therefore asked Moe Sihota a few weeks ago to determine whether the evidence that had been made public would amount to breaches of the Criminal Code. After reviewing the Criminal Code, the case law and very extensive discussions with prominent lawyers in the Province, it is our belief that there is sufficient evidence to warrant the laying of charges pursuant to Section 122 of the Criminal Code.

Section 122 reads as follows: It is entitled Breach of Trust by Public Officer. Every official who in connection with the duties of his office commits fraud or a abreach of trust is guilty of an indictable offence and is liable to imprisonment for five years whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Therefore today we are calling upon the Attorney General to investigate and determine whether he concurs with our view that there is sufficient evidence to warrant the lying of charges pursuant to Section 122 and Moe will provide some of the background on that charge.

SIHOTA: Mr. Harcourt has read to you the provisions of Section 122 of the Criminal Code. Those sections have been interpreted in several cases and I provide you with copies of the most salient, one of those of course being the McKitka decision which British Columbians, of course, are familiar with.

Its a surprising section in that the section has been interpreted in a fashion that I think is sufficient in this case with the evidence that we have on the Reid affair -- it will be appropriate now to proceed with the laying of charges.

In interpreting that decision, or that section, the Courts have held and I quote In our opinion, Section 122 as its known now is wide enough to cover any breach of the appropriate standard of responsibility and conduct demanded of the accused by the nature of his office as a senior civil servant. You can see I have highlighted that for you in the extract from the Criminal Code. Next page over at the top ...in speaking of the definition of breach of trust in the Reid affair it says that it may arise from the trustee having been guilty of negligence or carelessness involving to some degree of moral blame or in some of the cases he may have committed some type of gross fraud. In another case - in the case of Regina vs. McMorran the Court stated and I quote that even although the breach of trust is caused by ordinary negligence (and thats important) which would be ground between individuals only for an action for damages, nevertheless a breach of such character is sufficient to constitute a criminal offence if committed by one in an office of trust concerning the public.

In other words a public officer and is in connection with a matter concerning the public.

We have in this case, Mr. Reid, as Minister responsible being expected by the public to maintain a particular standard of responsibility. That standard of responsibility is defined as I have already quoted. In this case we have a situation where no application was made by the Semiamoo House Society for funds. We have a case where funds were sent over to Messrs. L..... and Sullivan. We have a case where there was an undisclosed arms length relationship between Mr. Reid and the ultimate recipients if I can paraphrase from the report of the Auditor General. We have a situation here where the guidelines were surpassed where over one-third of the funds needed were given and was in the words of the Auditor Gneeral irregular in relation to the normal program guidelines. And we have a situation here which was the beginning of a province wide scheme to have this recycling material spread throughout the Province.

On the basis of these facts and the case law which I have outlined, it is my view that there is sufficient evidence here to warrant the laying of charges. However, not content exclusively with my interpretation of it and I have taken the liberty of discussing this matter further, double checking it and triple checking it, with prominent defence and Crown Counsel in British Columbia. And their view is consistent with mine.

Now as a result, it is our view that should the Attorney General arrive at a position that is contrary to our view, it is my intention to attend at a Justice of the Peace, most likely here in Victoria, and swear a private information and trigger the laying of charges in this case. That is a process that is very similar to the type of process you may recall that Mr. Pollen initiated against Mr. Rogers as I recollect with respect to the Financial Disclosures Act and violations thereof. But it is our attention to put it more directly that if the Attorney General does not proceed with the laying of charges, we will proceed with the laying of charges.

Thank you.

HARCOURT: I think the point at which British Columbians are at right now on this matter is that everybody is frustrated with the Government's attempts to sweep this matter under the carpet and its not satisfactory to the people of British Columbia. Having said that we think that its only fair that the Attorney General be given a reasonable amount of time to make his determination . Should he not proceed, we will proceed. Its clear that Bill Reid did something that was wrong. He was caught. Bill Vander Zalm should have asked Bill Reid to step down and every day that Bill Vander Zalm doesn't act, it shows more that he doesn't know the difference between right and wrong.

Transcribed
by Dijt
21/3

Province of British Columbia
OFFICE OF THE ASSISTANT DEPUTY ATTORNEY GENERAL

Ministry of Attorney General
CRIMINAL JUSTICE BRANCH

MEMORANDUM

#20

Third Floor, Harbour Square, 910 Government Street, Victoria, British Columbia V8V 1X4 Telephone: (604) 387-4481

Mr. William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

April 12, 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 54
DATE: Aug 27/90
KRH

Re: Private Prosecutions

Further to your request of March 23, 1990, I can confirm that no written policy on private prosecutions has ever been circulated. The issue has, however, been discussed at Regional Crown Counsel meetings.

The matter was last discussed at the Regional Crown Counsel meeting on March 18, 1982 as agenda item #8. The minutes of that meeting reflect:

> Hunter raised the issue as to whether private prosecutions should proceed or whether they should be stayed. Filmer was of the view that Crown should intervene and the matter was resolved by agreement that private prosecutions are not to be allowed in the criminal court of British Columbia unless cleared through Regional Crown Counsel.

I have also spoken with all Regional Crown Counsel and Scott Van Alstine who, in turn, communicated with Mr. Brian C. Weddell, a repository of memoranda and memorabilia dating back to the inception of the current Crown Counsel system.

The present policy can be summarized as follows:

A. In relation to indictable offences:

1. The Attorney General will not permit a private prosecution to proceed;

2. If a private Information is laid:
    (a) if, after review and application of the usual charging criteria, the matter is worthy to be prosecuted, only an agent of the Attorney General will intervene to conduct the prosecution; and
    (b) if, after review and application of the usual charging criteria, the matter is not worthy of prosecution, an agent of the Attorney General would intervene to enter a stay of proceedings.

B. In relation to summary conviction offences:

1. If, after review and application of the usual charging criteria, the matter is worthy to be prosecuted, an agent of the Attorney General will intervene to conduct the prosecution;
2. If, after review and application of the usual charging criteria, the matter is not worthy of prosecution an agent of the Attorney General will intervene to enter a stay of proceedings; and
3. There may be exceptional circumstances in which a private prosecution proceeds. In such cases, perhaps one case every 3-5 years, the person who swears the Information prosecutes the case or obtains his own counsel.

Private prosecutions are becoming increasingly infrequent. In light of the onerous responsibilities upon Crown Counsel to act impartially, objectively and fairly and with the changing role of Crown Counsel, (for example the requirement for full disclosure) it is difficult to see any role in the criminal justice system for a private prosecutor. Private prosecutions, by their very nature, are brought because one party has a particular "axe to grind" and is unable to achieve satisfaction through the normal police/prosecution route.

Therefore, there seems to be little merit in allowing private prosecutions of any sort to proceed. The only issue is whether the possibility of commencing a private prosecution serves as an "escape valve" of some sort.

One must, however, keep in mind the distinction between a private prosecution and a private informant. I am not advocating abolition of the right of any citizen to swear an Information before a justice of the peace. That fundamental right should continue as a "check or balance" in the system. If a private informant swears an Information, then senior and experienced Crown Counsel are required to examine, or re-examine, the circumstances giving rise to the private Information. This requires the criminal justice system to give the complaint a "sober second look".

I attach as appendices:

1. Transcription of a note from Scott Van Alstine further to his conversation with Brian C. Weddell; and
2. Comments from Regional Crown Counsel on their regional policies relating to private prosecutions.

I recommend that this matter be placed on the next BMC agenda for approval, once and for all, of policy which we can then commit to writing for inclusion in the Crown Counsel Policy Manual! I further recommend adopting the policy under A 1 and 2 as applying to both indictable and summary conviction offences!

H.N. Yadowar
Director
Policy and Legal Services

HNY/jlm

Province of
British Columbia

Ministry of
Attorney General
[illegible]

MEMORANDUM

307, 815 Hornby Street Vancouver, British Columbia V6Z 2E6 Telephone (604) 660-4120 Facsimile (604) 660-4138

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 55
DATE: Aug 22/90

May 22, 1990

CONFIDENTIAL

BY FAX

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

Re: William E. Reid

Further to our discussion this weekend I write to provide you with my thoughts on what policy the Attorney General should follow should an Information be sworn and process issued against the Honourable William E. Reid.

It is settled law that the Crown has the discretionary right to intervene in criminal matters and stay a private prosecution. Powers set forth under Section 579 of the Criminal Code recognize the discretion in the Attorney General (or counsel instructed by him for that purpose) to halt a private prosecution. The judicial justification for this Crown prerogative is the presumed objectivity and impartiality of the Crown as contrasted to that possessed by individuals or special interest groups.

This issue has been tested many times since the proclamation of the Canadian Charter of Rights and Freedoms on April 17, 1982. In a wide variety of decisions it is clear that while the law allows a private informant to initiate proceedings it does not give him liberty to continue the proceedings should the Crown invoke Section 579(1) and direct the entry of a stay of proceedings.

See Regina v. Wren (1 June 1987) (B.C.C.A. 006186)
Davis & The Queen (1975) 24 C.C.C. (2d) 218 (B.C.S.C.) at page 222
Baker and R. (1986) 26 C.C.C. (3d) 123
Hamilton and R. (1986) 30 C.C.C. (3d) 65
A.G. of Quebec and Chartrand (1987) 40 C.C.C. (3d) 270 (Quebec C.A.)

..../2

If we can therefore take it as a given that the Attorney General has the absolute discretion to enter a stay of proceedings the issue obviously becomes whether or not that stay should be entered. In my view the integrity of the criminal justice system in British Columbia requires that counsel instructed by the Attorney General be prepared to enter a stay of proceedings. The test used to determine whether or not our office will prosecute a matter (substantial likelihood of conviction) is distinctly different from the test which will be applied by a Justice of the Peace in determining whether process should issue on the Information sworn by Mr. Sihota. If we are to maintain our integrity in this regard it is vital that only matters giving rise to a substantial likelihood of conviction attend before our courts. If we fail to act in the instant case, in my view, floodgates will be open on any other number of private prosecutions. It seems, after a time, that every case is "unique" on the face of its facts however to believe so is, in my view, to abdicate our responsibility.

The present fact situation is extremely distasteful. Mr. Sihota, in his capacity as a citizen (and Opposition Critic to the Attorney General) is clearly attempting to use the criminal justice process for his own political gain. The comments attributed to Mr. Sihota in the Vancouver Sun over the weekend suggests that he is determined to use the criminal courts to keep this issue alive. In my view, that is tantamount to professional misconduct and consideration should be given to reporting this incident, if accurately reported, to the Law Society.

In the case of Re Baker and the A.G. B. C., Toy, J. considered the position of a private prosecution. There, the private prosecutor was the father of a child killed in a motor vehicle accident who swore an Information alleging dangerous driving and criminal negligence upon which the Crown directed a stay, being of the belief that careless driving was the appropriate charge.

Toy, J., observed the right of a private citizen to act as the prosecution is not absolute or completely unfettered. Once the Attorney General or counsel on his behalf intervenes then that counsel assumes control of the prosecution and that counsel's rights are paramount to the private persons or his counsels rights. This reasoning is bound up with the underlying philosophy of criminal law that crimes are offences against the state. The sovereign is the protector of the King's peace. The Attorney General and his agent the Crown Attorney represent the sovereign in the prosecution of crimes. Toy, J. observed that when the role of the private prosecutor comes into conflict with that of the

..../3

Crown's prosecutor the role of the Crown's prosecutor is paramount where in his opinion the interests of justice requires that he intervene and take over a private prosecution.

Toy, J. in his judgment said the following:

> "The policy consideration that I consider of significance here is whether a private prosecutors right to prosecute should be an unfettered one. In the recent past counsel acting on behalf of the Attorney General in our criminal courts have been discharging their responsibilities with firmness and practical objectivity that has generally served our communities satisfactorily. The prospect of the loss of that attribute of objectivity convinces me that no such change is necessary at this time."

The only reason that I can determine that a stay of proceedings would not be entered in this private prosecution is if the Attorney felt bound by political restraints from interfering. I understand that is a real concern. However, in my view, the traditional role of the Attorney requires that steps be taken to protect the integrity of the criminal justice system.

It is my suggestion that John Hall should be instructed that he has complete and absolute discretion in this matter. He should be instructed to speak with Mr. Sihota and to determine whether or not Mr. Sihota has grounds or evidence which would meet the Crown's test of substantial likelihood of conviction. If that evidence is present then the prosecution should go forth with Mr. Hall prosecuting. If that evidence is not present then Mr. Hall should enter a stay of proceedings herein. Indeed, I would be pleased to undertake that task myself if you wish.

Robert H. Wright, Q.C.
Regional Crown Counsel

RHW:pz

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 56
DATE: Aug 27/95
KRH

FARRIS, VAUGHAN, WILLS & MURPHY

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VANCOUVER, B. C.
V7Y 1B3

REPLY ATTENTION OF R.S. Anderson

DIRECT DIAL NO 661-9372

OUR FILE NO 14261-1

May 25, 1990

BY FAX

Regional Crown Counsel
910 Government Street
Victoria, B.C.
V8W 1X3

Attention: W.F. Stewart

Dear Sirs:

Re: Bill Reid - Possible Charges

We enclose a number of statements released to the news that we thought you should be aware of.

The comment about using "NDP lawyers to prosecute" does not appear to have made it into the print media. It was heard on the CBC on March 20th. The broadcast indicated that Mr. Sahota indicated that if the Attorney General does not lay a charge then he intends to personally lay private prosecution against Reid. The news report when on to say that Mr. Sahota had stated that he would lay the charge personally and if necessary have "NDP lawyers prosecute".

Yours truly,

Farris, Vaughan, Wills & Murphy

Per:

Robert S. Anderson

RSA/gao
Encl.

issue alive in the media by using the processes of the courts.'
'Those were his comments, and I'll leave it to him to decide whether he is doing what I suggested he was doing in the house.'
Sihota and Smith agreed the case likely won't affect the Owen inquiry because they deal with two entirely different matters.

END OF DOCUMENT.

RANK 2 OF 44, PAGE 1 OF 2, DB CP90
May 18, 1990 20.03 EDT
National general news

Reid-Sihota

VICTORIA (CP)
Opposition justice critic Moe Sihota filed a private information complaint in provincial court Friday in connection with the Bill Reid lottery scandal.

Sihota, the NDP member for Esquimalt-Port Renfrew, had threatened to pursue the laying of breach of trust charges by April 19 unless Attorney General Bud Smith filed charges against Reid. Sihota said he held off on the action in order to raise the issue in the legislature.

The attorney general has already ordered a public inquiry to review the Crown decision not to prosecute Reid over a $277,000 B.C. lottery grant that he awarded to friends for a recycling project in his Surrey constituency.

The ministry had decided against filing criminal charges against Reid despite a police recommendation. Officials said there wasn't enough evidence to obtain a breach of trust conviction.

Reid, who had earlier resigned from the Social Credit cabinet

RANK 2 OF 44, PAGE 2 OF 2, DB CP90
over allegations of conflict of interest involving the grant, has been cleared of any wrongdoing by the comptroller general and the auditor general.

The next step is up to the court, said Sihota.

'First, the justice of the peace must decide whether or not the information I've given him is sufficient to warrant the laying of the charge,' said Sihota. 'Obviously, my material doesn't include the police reports, which are in possession of the attorney general and, therefore, it is handicapped in that regard.'

Smith accused Sihota of playing politics with the issue.

'He (Sihota) wanted to keep the issue alive in the media by using the process of the courts, and those were his comments in my presence,' said Smith.

The court adjourned the ca
OVFL

RANK 4 OF 44, PAGE 1 OF 7, DB CP90
May 11, 1990 13.55 EDT
PT REPEAT FOR ALL NEEDING SUNDAY, MAY 20
x-Edmonton -- Convention of public broadcasters, to May 26.
Whitehorse -- 8th international congress on circumpolar health, Yukon College. MONDAY, MAY 21
No major events scheduled. TUESDAY, MAY 22
Corner Brook, Nfld. -- Trial of William Sheppard in sex-for-welfare scandal.
Corner Brook, Nfld. -- Trial of two youths charged with variety of offences after shot was fired inside high school.
Saint John, N.B. -- Preliminary hearing for Daniel George

Weekend-Exchange-Hangouts
EDs: Lifestyles interest
-- -- --

In the 1920s, it was the soda shop; in the '50s, the drive-in theatre. Now it's usually the local mall.

For as long as there have been teenagers, there has been a place to hang out.

But what happens when a community grows too fast and offers no place for the kids to go?

The people of south Surrey and White Rock in British Columbia have found out: kids there head to the local McDonald's restuarant where the RCMP and McDonald's bouncers regularly deal with crowds of perhaps a hundred young people, just hanging around, revving car engines and looking for a party.

By Lindsay Kines Vancouver Sun

WHITE ROCK, B.C. (CP) -- The white stretch limousine pulled into the lot behind McDonald's and parked alongside the red Mustangs and jacked-up Ford Broncos.

It was Friday night and the place was crowded with teens and

RANK 9 OF 44, PAGE 1 OF 2, DB CP90

April 19, 1990 04.48 EDT
National-general news

Reid

VICTORIA (CP)

Former cabinet minister Bill Reid says the NDP lacks the courage to charge him with breach-of trust over his handling of lottery fund grants but the Opposition said Wednesday that only the timing will be different.

NDP justice critic Moe Sihota said a public inquiry ordered by Attorney-General Bud Smith 'may have an effect on the timing,' but the party still intends to lay private charges against the Surrey backbencher.

There are a number of legal reasons making it difficult to charge Reid until the inquiry is complete, Sihota said, but it might be possible to charge him before the inquiry's findings are made known.

'Either way, it's not going to be (today),' he said.

Sihota and Opposition Leader Mike Harcourt had given Smith until today to lay a breach of trust charge -- or they would swear a private charge.

RANK 9 OF 44, PAGE 2 OF 2, DB CP90

Ombudsman Stephen Owen is expected to start the public inquiry soon into the process Attorney General's Ministry lawyers used in electing not to lay charges, as recommended by the RCMP.

The issue stems from a $277,000 grant from lottery funds to a White Rock recycling project that used the money to buy equipment from a company owned by Reid's 1986 election campaign manager.

Reports by the auditor general and comptroller general said the handling of the grant was irregular and improper.

END OF DOCUMENT.

but later his staff said police recommended charges. Smith then explained the RCMP recommendation was reviewed by senior ministry staff and outside lawyers and it was decided the evidence wouldn't support a conviction. QUIT CABINET

Reid resigned as tourism minister and provincial secretary last September after his involvement in providing the grant was made public. The government later said guidelines for lottery grants had been tightened.

Smith said Wednesday he considered an inquiry earlier, but held off when NDP Justice critic Moe Sihota said he planned to lay a private criminal charge against Reid.

Led by Sihota and NDP Leader Mike Harcourt, the Opposition hounded Smith in the house about the Reid investigation.

Smith's temper grew increasingly short as he defended the integrity of his staff in the investigation, but eventually he lost his patience.

OVFL

RANK 18 OF 44, PAGE 2 OF 7, DB CP90

June 8th. Her arms and legs were tied behind her back. Police investigated her death as a homicide but ruled out foul play about a month later. ---

VICTORIA -- Opposition Leader Mike Harcourt says British Columbians will turn against each other if the Carmanah Valley is logged.

Replying to the speech from the throne yesterday in the B-C Legislature, the N-D-P leader said if Carmanah's old-growth timber is cut, it will begin a battle that will continue in valley after valley.

Harcourt suggests the government establish a mechanism to settle confrontations among the logging industry, environmentalists and native Indians.

Forests Minister Claude Richmond says the government will have a decision soon on logging the 67-hundred hectare valley on the west coast of Vancouver Island. ---

VICTORIA -- The N-D-P wants the Socreds to squirm over the Bill Reid affair.

Justice critic Moe Sihota says he may postpone his private prosecution of the former B-C cabinet minister so he can keep embarrassing the government by asking questions in the legislature about Reid's handling of lottery funds.

RANK 18 OF 44, PAGE 3 OF 7, DB CP90

Yesterday, Sihota drew accusations of lies from Premier Vander Zalm when he asked the premier whether he condoned the way Reid handled lottery grants.

Reid left cabinet after it was revealed a grant to a White Rock recycling project was used to buy equipment from a company controlled by his former campaign manager and a family friend. ---

PRINCE GEORGE -- The man in charge of the Prince George R-C-M-P detachment has resigned to seek the Social Credit nomination in the newly redrawn Prince George North provincial riding.

Superintendent Keith Thompson, a 29-year veteran of the force, told a news conference he decided to announce his decision now because a provincial election seems near.

New Democrat Lois Boone now holds the riding for the N-D-P. The 48-year-old Thompson will contest the riding against college English instructor Paul Ramsay who has the N-D-P nomination. ---

VICTORIA -- Health Minister John Jansen says trustees at Royal Inland Hospital in Kamloops will be reinstated within the next three months.

His ministry suspended the board last August after the hospital

National general news

Legis-B.C.-Reid

VICTORIA (CP)

New Democrat Moe Sihota says he may postpone laying a private charge against former cabinet minister Bill Reid so he can keep asking questions about the issue in the B.C. legislature.

When Sihota, the member for Esquimalt-Port Renfrew asked Premier Bill Vander Zalm what he thought of the lottery grant that led to Reid's resignation, the premier accused Sihota of being 'sleazy' and spreading lies.

Vander Zalm later withdrew the charges, saying he got carried away and picked up language from an NDP news release.

Outside the house, Sihota said he wants to keep asking questions, so he may delay going to court over the issue.

Reid was criticized by the comptroller general for channelling a lottery grant last year to his former campaign manager and a friend.

The RCMP investigated and recommended laying breach of trust charges, but senior officials in the Attorney General's Ministry

RANK 19 OF 44, PAGE 2 OF 3, DB CP90

decided against pursuing a criminal case.

Sihota then promised to lay private charges, something done only occasionally in the court system, if the government didn't change its mind.

But he said Monday it may take a bit longer than his original April 19 deadline.

'It can be laid tomorrow if I wanted to, but I don't want to give them the shield of saying that it's before the courts.

'I want to be sure I exhaust the full pool of questions in question period before I proceed to court. I'm sure a lot will develop and unfold between now and then.'

The schedule of sittings until April 19 -- the day the new provincial budget is presented -- while subject to change, allows for only three question periods.

The session will adjourn Thursday afternoon for the Easter break and will not resume until April 18.

Sihota said most of his questions will be aimed at Vander Zalm and Attorney General Bud Smith, who was absent Monday.

Reid, the central figure in the case, has been shifted to a remote corner of the backbenches since Vander Zalm asked him to resign from cabinet last year.

He left cabinet after it was revealed he gave a $277,000

RANK 19 OF 44, PAGE 3 OF 3, DB CP90

lottery grant for a recycling project to a handicapped society in White Rock, then told the agency to turn most of it over to a company controlled by his former campaign manager and a close family friend.

END OF DOCUMENT.

RANK 20 OF 44, PAGE 1 OF 4, DB CP90
April 6, 1990 19.41 EDT
National general news

B.C.-Public-Accounts
By Gerard Young

VICTORIA (CP)
The NDP hopes to use the province's financial statements to support its claim the Social Credit government is taking care of its friends out of public coffers.

Three volumes of public accounts for the fiscal year ending March 31, 1989 were tabled in the house Friday, the first regular day of business in the new session.

The NDP argued the statements should have been made public 3 1/2 months ago.

'From the limited evidence that we've already been getting through our brown paper envelopes (leaks and tips) there's plenty of reason to ask some solid questions,' said New Democrat Darlene Marzari, chairman of the public accounts committee.

'I think there is real evidence but right now we have to call it speculation.'

She said she will particularly scrutinize who received lottery

RANK 20 OF 44, PAGE 2 OF 4, DB CP90

grants to see if Socred supporters received any special treatment.

With an election expected in the next 18 months, the NDP is banking that a scandal over lottery grants -- which cost Socred member Bill Reid his cabinet post -- is not isolated.

And that would support their claim the Socreds aren't running an open, ethical government, the New Democrats say.

The provincial comptroller general found there were irregularities in Reid's handling of lottery funds when he was tourism minister and provincial secretary.

Although the RCMP recommended criminal charges be laid against Reid, the attorney general's department decided there wasn't evidence to support a successful case. Reid resigned in September.

SPECIAL GRANTS

'We're looking for situations where individuals who are basically Social Credit hangers-on are getting lottery grants,' Marzari said.

Finance Minister Mel Couvelier said he doesn't think there are further irregularities in the awarding of lottery grants.

He said the guidelines have been tightened to prevent similar problems.

The statements show the government had an operating deficit of $329 million. The province had gross revenues of $12.5
OVFL

RANK 21 OF 44, PAGE 1 OF 12, DB CP90
April 5, 1990 18.15 EDT

B.C.-Legis, DL Bgt
Day Lead Budget
See LaserPhoto -- VKA 2

RANK 21 OF 44, PAGE 11 OF 12, DB CF90

even though opening-day guests were in seats on the floor of the chamber. Speaker Stephen Rogers said the guests could leave, but there was no break in the action. CHEAP SHOT

'They (the NDP) need to make a headline, a cheap headline, while television cameras are running,' said government house leader Claude Richmond of the NDP.

He said the morals and ethics on the government side were high and wished he could say the same thing for the Opposition side.

Moe Sihota, NDP Justice critic, set Richmond off when he suggested the government put aside its history of favoring its friends.

'It seems as if the government has been unable to distinguish between right and wrong.'

He was referring to Bill Reid, who was found to have been involved in irregularities in handling of lottery funds when he was a cabinet minister. Reid resigned his portfolio in September, but no charges have been laid despite the NDP pressing for that.

The acrimony -- predicted before the session opened by both sides -- almost overshadowed the speech.

The speech, an outline of the government's intentions in the session, said about the referendum bill that the 'government believes our citizens should have a more direct voice in

RANK 21 OF 44, PAGE 12 OF 12, DB CF90

fundamental issues, particularly economic issues, of importance to all British Columbians.'

It said the pension plan 'has the potential of improving income security for many British Columbians, particularly homemakers, employees of small businesses and lower wage earners.'

The government said it will keep a close eye on the economy by spending 'only what taxpayers can afford.'

That reference, in tandem with comments about the public service, indicated to the B.C. Government Employees Union that public servants are facing wage controls.

Union president John Shields called the possible controls cynical and an attempt to use government employees as a battering ram. Vander Zalm waffled on whether he would limit wage increases, saying the legislation, when presented, would determine that.

Standing in the legislature is Social Credit 42, NDP 26 and one Independent.

END OF DOCUMENT.

RANK 22 OF 44, PAGE 1 OF 7, DB CF90

April 4, 1990 17.54 EDT
National general news

B.C.-Legis
By Gerard Young

VICTORIA (CP)

The environment and the economy are expected to be big issues

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 57
DATE: Aug 27/90

May 29, 1990

DuMoulin Black
Barristers and Solicitors
100 - 595 Howe Street
Vancouver, B.C.
V6C 2T5

Attention: John Edward Hall, Q.C.

Dear Sirs:

Re: Regina vs. Reid

Further to our conversations of May 25 and 28, 1990, please review the following:

1) a copy of Mr. Smith's letter dated March 26, 1990 to Mr. Harcourt; and

2) a copy of the exhibit filed by Mr. Sihota in the Provincial Court re R. v. Reid. It is my understanding that this exhibit has been delivered to your office.

Prior to June 12, 1990, I would appreciate receiving your written opinion on the following issues:

1) did either Mr. Harcourt or Mr. Sihota contact you or provide you with any material as a result of Mr. Smith's letter of March 26, 1990?

2) if you had been in possession of the material filed by Mr. Sihota when you gave your opinions on January 29 and February 22, 1990, would your recommendation have been that Mr. Reid should not be prosecuted?

Thank you again for your co-operation.

Yours truly,

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

WPS:ew

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 58
DATE: Aug 27/90

DuMOULIN BLACK

BARRISTERS & SOLICITORS

MICHAEL L DuMOULIN
W DAVID BLACK
GEORGE A BRAZIER
JOHN E HALL, Q.C.
SARGENT H. BERNER
BRIAN C IRWIN
KENNETH W BALL
CHERI L NATAROS
COREY M. DEAN
KENNETH L.H EMBREE

10TH FLOOR, 888 HOWE STREET
VANCOUVER, CANADA
V6C 2T6

TELEPHONE (604) 687-1224
TELECOPIER NO. (604) 687-8772

FILE NO. 86-25

June 6, 1990

CONFIDENTIAL

Ministry of Attorney General
Criminal Justice Branch
Harbour Square, Third Floor
910 Government Street
Victoria, British Columbia
V8V 1X4

Attention: William P. Stewart
Assistant Deputy Attorney General

Dear Sirs,

RE: Regina v. Reid

I have not received any communications from anyone as a result of Mr. Smith's letter of March 26, 1990.

I have now had a chance to examine the exhibit filed by Mr. Sihota in the Provincial Court concerning the Reid matter. I do not perceive anything in the material filed by Mr. Sihota that is any addition to the earlier material that I reviewed. In those circumstances, I continue to be of the view that this is not a case where I would recommend prosecution.

That is not, however, the end of the matter so far as I am concerned. There is now extant an Information laid against Mr. Reid before the Justice of the Peace, and the Justice of the Peace has issued process. I understand that the process is returnable next week. In cases such as homicide or robbery, it is usually a relatively straightforward task to decide whether or not there is a body of evidence that will suffice to support a charge. There are other classes of crime such as obscenity or breach of trust where the assessment of whether there exists a sufficient basis to proceed with a charge is a much more difficult process. These latter crimes possess a somewhat "amorphous" quality that makes the analysis a much more difficult process. There is in these sorts of cases an element of the crime being in the eye of the beholder in that one person may find a set of facts to be sufficient to mobilize criminal prosecution while another may view the matter as not a situation that requires prosecution.

The situation here at present is that a citizen has laid an Information which has been accepted by a Justice of the Peace and process has been authorized. Each case has to be looked at on an individual basis. It seems to me that in the majority of instances where a private citizen (or a peace officer) alleged a charge that was deemed unworthy of prosecution, it would be the clear duty of the Attorney General to order a stay of proceedings. There are other instances, and I think the present case is one, where the matter is not sufficiently clear that I would feel confident in recommending at this stage that a stay of proceedings must be entered.

A charge has been laid and the Informant apparently believes that there is a sufficient basis for proceeding. I would be reluctant to advise the Attorney General to prevent the Informant from proceeding with the charge in question. Given the nature of the charge and the modest standard of review required relative to committal, one could envisage a situation where a Court could, upon hearing the evidence, order a committal for trial. If such a stage were reached in the proceedings, nice questions could arise as to what should be the position of the Attorney General relative to the possible preferment of an Indictment. As you are aware, there are certain provisions contained in s. 574 of the Code that differentiate between the position of the Attorney General and a private prosecutor in such a situation. Consideration of those questions are best left to the future but, of course, the Attorney General will always have a duty to ensure that on the one hand there is no impediment to access to justice, and on the other hand that there is a quality control process in the screening of charges.

My recommendation, therefore, is that the Ministry not be involved in this prosecution at this stage, but that no bar should be placed in the way of the Informant relative to the Information that is presently before the Court.

Yours truly,

DuMOULIN BLACK
PER:

JOHN E. HALL
JEH/jg

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 59
DATE: Aug 27/90
KH

The Honourable Bud Smith, Q.C.
Attorney General for the
Province of British Columbia

June 8, 1990

Re: Suggested Points to Incorporate into Remarks to be Made by the Attorney General at the Time of Announcing His Position With Respect to the Prosecution Initiated by Mr. Sihota Against Mr. Reid

Introduction

- Mr. John Hall was retained to examine the material that was filed as an exhibit by Mr. Sihota.
    - Mr. Hall's report of June 6, 1990 states that there is nothing in this material that is in addition to the earlier material reviewed by him
    - in my letter to Mr. Harcourt of March 26, 1990 I invited him and Mr. Sihota to provide additional evidence and legal opinions to Mr. Hall. Mr. Hall did not receive any communication from either Mr. Sihota or Mr. Harcourt
    - Mr. Hall, Q.C., is one of the preeminent counsel in British Columbia
    - he is the only lawyer who has prosecuted a case under s.122 of the *Criminal Code*
    - he is well recognized as an expert in the area of commercial crime.
- In his letter of June 6, 1990, Mr. Hall does not recommend a prosecution of Mr. Reid.

Options Available to Me as Attorney General

- I can direct that Crown Counsel enter a stay of proceedings.
  - Mr. Sihota has sworn an Information
  - a Justice of the Peace has issued a summons returnable for June 12th
  - Note: The test applied by the Justice of the Peace, that is, "is there reasonable and probable grounds" for the Informant to believe that an offence was committed is a much lower test than that applied by Crown Counsel in deciding whether charges should be approved for prosecution
  - the Crown test: Is there a substantial likelihood of a conviction?
  - the test requires that the Crown consider all of the evidence, including the obvious and likely defences.
- I have considered the allegations that have been made against those persons involved in the charging decision.
  - which led to my calling for a public inquiry into the process of Crown discretion.
- I have considered as well
  - the potential harm to the administration of criminal justice
  - more importantly the public confidence in the justice system
  - and the potential affect that stay of proceedings would have on eroding public confidence
  - the importance of protecting the public confidence in the justice system is in my view paramount

  - it is my sworn duty to protect the integrity of the justice system.

o I have decided not to direct a stay of proceedings.

  - judicial process has been issued

  - if the matter were vexatious and oppressive then I must intervene to direct a stay of proceedings

  - this is not one of those cases.

Having concluded that the entry of a stay of proceedings is not appropriate, I have two options:

1) to intervene to have counsel on behalf of the Crown conduct the prosecution or

2) to allow Mr. Sihota as the private Informant to continue with his private prosecution.

o I have considered the following factors in deciding whether Crown Counsel should conduct the prosecution.

o The Assistant Deputy Attorney General for the Criminal Justice Branch has decided that charges should not be laid against Mr. Reid.

  - in reaching his decision, he applied the usual charge approval standards

  - he had at his disposal

  - an opinion from the Regional Crown Counsel in Vancouver

  - opinions from senior members of the private bar.

o His decision was appealed in accordance with the process established by the Justice Reform Committee.

  - that decision was confirmed by the Deputy Attorney General.

- As I indicated
    - I gave Mr. Harcourt and Mr. Sihota the opportunity to produce further evidence to Mr. Hall
    - they did not do so.
- I have considered referring this matter to another, the fourth, independent prosecutor.
    - remind you, this file has already been examined by senior in-house counsel and three very experienced, well respected and independent counsel from the private bar
    - to refer the case out again, would add nothing to the process.
- the intervention of the state to use its criminal law power, should be applied
    - consistently, fairly and in accordance with established principles and policies
    - that is why we have charging criteria.
- Considering these factors:
    - it is not appropriate for me to direct Crown Counsel to proceed with this charge.

Finally, I must consider whether Mr. Sihota should be allowed to proceed with his private prosecution.

- Should I allow Mr. Sihota to act as the Attorney General's agent?
    - the answer is clearly "no" for the reasons I have enumerated

  - as I have decided that Crown Counsel should not prosecute
  - then it is inappropriate for me to instruct Mr. Sihota to act as my agent.
- I have concluded therefore
  - that Mr. Sihota should he wish to carry forward with this prosecution
  - he must do so as a private prosecutor
  - without any intervention on behalf of the Crown.
- Mr. Sihota is a member of the Law Society of British Columbia.
- He is an experienced criminal lawyer.
- He is a member of the Legislature.
- He knows his rights and obligations to both bodies.
- While I am allowing this case to proceed
  - considering the unique circumstances
  - it is entirely unlikely that a situation will arise in the future
  - which couples an Informant with Mr. Sihota's credibility
  - with an accused who is also a member of the Legislature.
- A private prosecution is not unknown
  - in 1988 in New Brunswick
  - in the case of Regina v. A.G.S. Enterprises Ltd.

- a private prosecution proceeded where the complainant disagreed with the charging decision made by Crown Counsel.

o In conclusion

- in British Columbia the Crown intervenes either to conduct the prosecution or to enter a stay of proceedings

- when a private Information is laid.

o I have concluded that

- in the unique circumstances of this case

- I will not stand in the way of Mr. Sihota's private prosecution of Mr. Reid.

Possible Questions and Answers

1) Was the cost of prosecuting a factor you considered?

- **cost is not and should not be considered as a factor in deciding whether a prosecution should proceed**

- **many complex and costly prosecutions are undertaken by the Crown**

- **the charging decision on this case was made on its facts**

- **if Mr. Sihota is concerned about the cost**

- **he should have considered that before he embarked on his course of action.**

2) What happens if Mr. Reid is committed for trial?

- Mr. Sihota can apply under s.574(3) of the Code
- for an order from the court to prefer and Indictment.

3) Is it reasonable to anticipate that Mr. Sihota may apply to the Supreme Court for an order requiring the Attorney General to prosecute

- Mr. Sihota can pursue any remedy he wishes
- he will have to apply for mandamus
- to force the Attorney General to exercise his discretion
- the Attorney General has exercised his discretion not to prosecute.

Regarding this answer, I will be confirming with Bob Edwards to ensure this response is indeed accurate.

Should you require any further information, please do not hesitate to contact me.

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

WFS:ew

PROSECUTE INQUIRY

EXHIBIT # 60

DATE Aug 27/9

KBH

J.M. PETER FIRESTONE, B.A., LL.B.
BARRISTER & SOLICITOR · NOTARY PUBLIC

PENTHOUSE SUITE
620 VIEW STREET
VICTORIA B.C. V8W 1J8
TELEPHONE (604) 386-1113

BY FAX: 387-9099

13th June 1990

RECEIVED
JUN 13 1990
DEPUTY
ATTORNEY GENERAL

Mr. Brian Marson
Ministry of Finance and Corporate Relations
Office of the Comptroller General
Parliament Buildings
Victoria, B.C.
V8V 4R8

re: Private Prosecution of William Reid, M.L.A.

Further to our telephone call of June 12th, 1990, I write to inform you that I am counsel for the Informant and as such am conducting a private prosecution of Mr. Reid. I have had an opportunity to read your special report and specifically I am aware that there exists a transcript of the evidence taken at this inquiry, and in addition 58 exhibits were taken into evidence.

I am writing to request that you voluntarily provide to me the original 58 exhibits which were taken into evidence at your inquiry. In addition, I am writing to access the transcripts of the evidence taken under oath at your inquiry.

I, as a courtesy, called your counsel, Mr. Ace Henderson of Vancouver, and he indicated to me that he was no longer acting in this matter. He indicated that I should call you directly and, of course, I did so.

I have had a chance to review the Financial Administration Act and to review the Inquiry Act and I see no bar, or privilege, which would legally require you to refuse my request. I am hopeful that you will give me the same co-operation you would give a regular prosecutor.

I have taken the opportunity to review the provisions of the Criminal Code and I see that, pursuant to section 487(1) of the Criminal Code, if a private citizen has reasonable and probable grounds as to the existence of a document and as to its location, a search warrant can be obtained. By virtue of your inquiry, I am led to believe

. . . 2

that the original exhibits were lodged with you, as well as the transcripts of the witnesses taken under oath. I am hopeful that I will not have to rely on a search warrant power or a subpoena power and that you will simply deliver the materials I have requested herein voluntarily.

In our discussion on the 12th of June 1990, you indicated that you weren't aware whether you still had the original exhibits or the transcripts. I am writing to enquire as to where these exhibits and transcripts may be and, if you have them, I am asking for their production to me in a way which will ensure the integrity and continuity of the exhibits. I would be happy to have simply a copy of the evidence given under oath at your inquiry and I do not need an original.

As you probably can understand, as a private prosecutor at the beginning of a prosecution I am very concerned about protecting the integrity and continuity of the exhibits, and it is very important for me to determine their location. Accordingly, by this letter I am requesting your cooperation in providing me the necessary information that I am requesting herein, and to provide me with the original documents as well as the transcripts that I have requested.

Yours sincerely,

Peter Firestone

J. M. PETER FIRESTONE

JMPF/jmb

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 61
DATE: Aug 27/90
KRH

J.M. PETER FIRESTONE, B.A., LL.B.
BARRISTER & SOLICITOR · NOTARY PUBLIC

PENTHOUSE SUITE
620 VIEW STREET
VICTORIA, B.C. V8W 1J6
TELEPHONE (604) 386-1112

BY FAX: 387-6224

13th June 1990

Hon. E.N. Hughes, Q.C.
Deputy Attorney General
Ministry of Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4

Dear Sir:

re: Private Prosecution of William Reid, M.L.A.

Further to my telephone conversation with your delightful and very accommodating secretary on the 12th of June 1990, I write to inform you that I have been retained by the Informant in the abovecaptioned prosecution. I appeared as counsel for the Informant in Provincial Court at 222 Main Street on the 12th of June as counsel and the matter of the prosecution of Mr. Reid was adjourned to the 17th of July 1990 at 9:30 a.m. in Provincial Court in Vancouver.

I am writing to seek your cooperation in relation to the dissemination of any relevant materials which may currently be in your possession, to me as counsel for the Informant, as a private prosecutor. Specifically, I am requesting that efforts be made to have the Government of British Columbia cooperate in voluntarily turning over relevant materials to me without me having to rely on my subpoena power and the right of a private citizen to get a search warrant pursuant to section 487(1) of the Criminal Code of Canada. I am hopeful that the Government of British Columbia, through the Attorney General's ministry, will cooperate and provide me with confirmation of the location of the following:

1. A copy of the Report to Crown Counsel, or its equivalent, prepared by Inspector Ernie MacAulay of Vancouver.

2. The original 58 exhibits taken into evidence at the inquiry conducted by the Comptroller General, Brian

tc in Icro [illegible] to disc. this ltr.

Marson. These documents are specifically referred to in Marson's report at page 1.

3. A copy of the transcript of the evidence of the witnesses presented to the Marson Inquiry who were under oath and subject to cross-examination.

In addition, I request production of these materials to me as soon as reasonably possible.

As you can understand, from my perspective I don't see the individual ministries of government, for the purposes of my inquiry, to be severable. I am hopeful that you, on behalf of the Government of British Columbia, as Deputy Attorney General of this province, may direct those who have possession of the documents that I am requesting, to have them turned over to me voluntarily.

I may find it, of course, quite frustrating, and indeed a roadblock to this prosecution, if I am faced with a statement by you that none of these documents are specifically in the control of your ministry and that I will have to seek disclosure from the specific ministries in question. In my view, roadblocks should not be placed in the way of a private prosecutor in a case such as this and cooperation should be undertaken. As you are no doubt aware, I do not have the resources a normal prosecutor would have and in my view the government should recognize that it has a duty to simply hand over these materials voluntarily in a way which preserves the continuity and integrity of the various things requested.

Please be advised that I have reviewed the provisions of the Criminal Code and specifically section 487(1) of the Code, and I am of the view that a private citizen can obtain under the Criminal Code a search warrant to obtain the necessary documents for a Criminal Code prosecution. I am hopeful that the Government of British Columbia will not force me to the task of obtaining search warrants to search the various locations where there is a reasonable belief the original documents or relevant materials are housed. In addition, under the provisions of the Criminal Code, of course, I can subpoena the various persons in control of the relevant material to court, but I am hopeful that I will not be pushed to this process by the Government of British Columbia. In addition, I have determined that no

. . . 3

subpoena may issue until there has been an election (which has not occurred in this case) and accordingly I would have to delay isuing any such process until the 17th of July or thereafter, prejudicing my prosecution.

Could I please have a timely response to my requests herein. As you are no doubt aware, as a private prosecutor I am concerned about protecting the integrity and continuity of the original documents which are necessary to prove this case. At the time of dictating this FAX'ed letter, I am trying to confirm the location of the relevant material and who has possession of it. I am hopeful that you will help me, as well, in producing the requested materials.

Yours sincerely,

Peter

J. M. PETER FIRESTONE

JMPF/jmb

file Reid

PROSECUTE INQUIRY

EXHIBIT # 62

DATE: Aug 27/90

KBH

J.M. PETER FIRESTONE, B.A., LL.B.
BARRISTER & SOLICITOR · NOTARY PUBLIC

PENTHOUSE SUITE
620 VIEW STREET
VICTORIA, B.C. V8W 1J6
TELEPHONE: (604) 386-1112

BY FAX: 387-6224 20th June 1990

Hon. E.N. Hughes, Q.C.
Deputy Attorney General
Ministry of Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4

RECEIVED
JUN 20 1990
DEPUTY
ATTORNEY GENERAL

Dear Sir:

re: Private Prosecution of William Reid, M.L.A.

Further to my telephone conversation with you on the 19th of June 1990, I have agreed to meet with your Director of Operations, Mr. Ernie Quantz of Victoria, to discuss my requests contained in my letter of June 13th, 1990.

It is very important, however, that I have an official response to my request. It is my understanding that you will be in a position to FAX me an official response tomorrow and I look forward to receiving it at your convenience.

Yours sincerely,

J. M. PETER FIRESTONE

JMPF/jmb

cc- E. Quantz. ✓

Province of
British Columbia
CRIMINAL JUSTICE BRANCH

Ministry of
Attorney General

MEMORANDUM

Third Floor, Harbour Square, 910 Government Street, Victoria, British Columbia V8V 1X4

Mr. E.N. (Ted) Hughes, Q.C.
Deputy Attorney General

June 21, 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 63
DATE: Aug 27/90
KRH

Re: Private Prosecution of Bill Reid and the Statutory Duty of the Attorney General to Supervise All Criminal Prosecutions

The Attorney General has a statutory duty to supervise all prosecutions, both public and private.[1] This duty includes the obligation to intervene in private prosecutions for the purpose of conducting the prosecution or entering a stay of proceedings where the public interest requires such intervention.

It is essential that the Attorney General exercise his supervisory duty over private prosecutions as without this protection one "...cannot confidently state that potential accused persons possess the necessary protection against [abusive private prosecutions]".[2] Malicious prosecution is too difficult to prove and the cost available to the defendant under the Criminal Code are inadequate.

The Law Reform Commission of Canada recognized in its working paper on Private Prosecutions that this potential for abuse does exist including in the following circumstance.

> *Private prosecutions potentially can also be abused where there is public discussion or controversy concerning a matter and one of the persons involved proceeds to lay a criminal charge concerning it. This could, owing to the dampening effect of the subjudice rule which restrains public discussion of matters before the courts, stifle public debate at the most important moment and matters may be compounded by the fact that the charge may later be withdrawn by the prosecutor at the hearing.*

---

[1] *See Working Paper #52 'Private Prosecutions' by the Law Reform Commission of Canada and referenced materials including page 27.*

[2] *Id., p. 24.*

Consequently, even in those cases where it would be inappropriate in the public interest for the Attorney General to intervene in a private prosecution to either conduct or stay it, the Attorney General's duty to supervise all prosecutions requires that he take the necessary steps to ensure the interests of the accused are protected.

Where a legitimate concern exists in the mind of the Attorney General that the private informant or prosecutor may have an ulterior motive in proceeding with the prosecution the Attorney General would meet his statutory obligation by requiring a court order (subpoena) before releasing confidential information to the private prosecutor. The requirement for a subpoena is justified for two reasons:

1) it provides a judicial officer (judge or justice) the opportunity to review the request for information thereby ensuring that the requested information is necessary for a legitimate prosecution; and

2) it provides a mechanism for a potential witness to challenge the subpoena in superior court thereby obtaining a further judicial review on the issue of whether the requested information is required to support the prosecution.

The request for a court order (subpoena) is clearly the preferred mechanism for the Attorney General to use in ensuring he has met his statutory duty to supervise. If for some reason this course is not open to him a less desirable option would be to release confidential information only on a personal undertaking from counsel for the informant. It is suggested that this undertaking include the following provisions:

1) that during the course of the prosecution counsel for the informant will seek to obtain only that information which is relevant to the prosecution;

2) that the information obtained by counsel for the informant will be released only to the court during the course of the prosecution or to the defence in accordance with the Attorney General of British Columbia's policy of full disclosure;

3) that once the prosecution is concluded counsel for the informant will forthwith return all materials received and subsequent copies made to the office of Crown Counsel, 3rd Floor, 910 Government Street, Victoria, B.C.; and

4) that if counsel for the informant ceases to act as counsel prior to the conclusion of the prosecution he will forthwith return all materials received and subsequent copies made to the office of Crown Counsel, 3rd Floor, 910 Government Street, Victoria, B.C..

In circumstances where the Attorney General is not completely confident that a private prosecution is being conducted for legitimate reasons to release confidential information without the protections referred to above would bring the Attorney General in breach of his statutory duty to supervise all prosecutions thereby ensuring that the legitimate interests of the Accused are protected.

Ernie Quantz
Director of Operations
Criminal Justice Branch

EQ:ew

British Columbia
OFFICE OF THE
DEPUTY ATTORNEY GENERAL

Attorney General

910 Government Street
Victoria, British Columbia
V8V 1X4
Telephone: (604) 387-5211
Rapicom: (604) 387-6224

June 21, 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 64
DATE: Aug 27/90

Mr. J.M. Peter Firestone
Barrister and Solicitor
620 View Street
Penthouse Suite
Victoria, British Columbia
V8W 1J6

Dear Mr. Firestone

Re: Private Prosecution of William Reid, M.L.A.

I write in response to your letter of June 13. My attendance out of the province on government business until June 18 prevented an earlier reply.

You express concern about protecting the integrity and continuity of original documents. Let me assure you that there will not knowingly be any interference whatever with the preservation and safekeeping of the documents that you have identified as being of interest to you.

I am mindful of the position in which you find yourself. It is an unusual one but I can assure you of the cooperation of the Attorney General in meeting the request that you make.

It is well recognized that the Attorney General has a statutory duty to supervise all prosecutions both public and private. This duty includes an obligation to ensure that the interests of accused persons are protected even in those private prosecutions where the Attorney General has determined it is not in the public interest to intervene.

The unusualness of this case is such that great care must be taken to see that a precedent is not established that could have serious implications in possible future unrelated proceedings but which bear on matters pertaining to criminal law. To that end, we have directed our thoughts to identifying a process that would clothe you with authority to have early possession of the documents you seek and clearly establish the manner in which the documents will

... 2

be turned over to you and the purpose for which they will be used. Without these protections, the future demands and resulting implications of private citizens making similar requests to the Attorney General of the day could be dangerous and wide-sweeping for many, given the sensitive material often contained in such documents vis a vis the reputation, honour and integrity of citizens.

In our view, these protections are met if you obtain a subpoena requiring the production of the documents you seek. The requirement for a subpoena is justified for the following reasons and, in addition, a precedent will be established should a similar situation again arise:

1) a judicial officer (judge or justice) will have the opportunity to review the requests for information by private prosecutors thereby ensuring that the requested information is necessary for a legitimate prosecution; and

2) it provides a mechanism for a potential witness; including private citizens, to challenge the subpoena in a superior court and to obtain a further judicial review on the issue of whether the requested information is required to support the private prosecution.

You have already met with Ernie Quantz, Director of Operations, Criminal Justice Branch, who has been designated the Ministry coordinator with respect to this matter. Mr. Quantz stands ready to be cooperative and to be of whatever assistance possible in an endeavour to meet your request in a responsible manner.

I have advised that the case has been adjourned to July 17 to Disclosure Court at the Provincial Court at 222 Main Street, Vancouver. We suggest that you apply for a subpoena as early as Monday, June 25 and I confirm that Mr. Quantz is prepared to appear with you and to speak in support of your application.

We believe a convincing argument can be presented as to why the subpoena should issue, both from the point of view of meeting the underlying purpose of Disclosure Court as well as on the strength of judicial authority that affirms the use of the relevant section of the Criminal Code allowing for the issuance of the subpoena in circumstances such as exists here. I understand Mr. Quantz has outlined our position to you and has provided you with relevant judicial authority including the unreported decision of the Alberta Queen's Bench, Regina v. Gingras and references therein.

The issuance of a subpoena would clothe you with the authority to receive from the Crown the documents you seek. They would immediately be turned over to you.

I have been advised that the police, for reasons I understand and appreciate, have declined your request to turn over to you the first of the three requested documents as listed in your June 13 letter to me. To be sure that we are accommodating you in every possible way with respect to meeting the full request you have made, we have sought and obtained from the police, approval for us to release to you our copy of the document that you request in point 1 of your letter. That would accompany the other documents referred to in the other two points in your letter once authority exists for us to act in this manner.

I trust you will see this as a reasonable course to follow. Without question, it is our view that this is also the course that ought to be followed.

If you determine to decline this proposal and have some alternative suggestion to make, please communicate it to us before taking any other action and we will give immediate attention to it.

I understand your position that the individual ministries of government are not seen by you as being severable and, hence, your request that this Ministry play a coordinating role to meet your needs. That request will be met by Mr. Quantz participating in the manner indicated and, in that way, it will not be necessary for you to be dealing with various people in government. To facilitate and coordinate your efforts, this reply should be treated by you not only as a response to your June 13 letter to me but also as a response to your letter of the same date to Mr. Marson. If you have written to any other persons in government, other than to Mr. Marson and me, please let Mr. Quantz know so he can facilitate matters.

The transcripts of the proceedings before the Comptroller General were produced at a cost of in excess of $1700. These will be released to you in accordance with the foregoing procedure at no cost, however, we request that these transcripts and also all other materials that may be provided to you in the same manner be returned to our office once this case has concluded.

... 4

I am sure you understand that in the interest of assuring a fair trial for an accused person that the information obtained by you will be released only to the Court during the course of the prosecution or to defence counsel in accordance with the Attorney General's policy of full disclosure.

We will await your response.

Yours truly

E.N. (Ted) Hughes
Deputy Attorney General

bcc: Honourable Bud Smith, Q.C.
William F. Stewart
Ernie Quantz

NOT USED
Bill/Ernie version 2 at 12 10 pm

June 21, 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 65
DATE: Aug 27/90
KH

Mr. J.M. Peter Firestone
Barrister and Solicitor
620 View Street
Penthouse Suite
Victoria, British Columbia
V8W 1J6

Dear Mr. Firestone

Re: Private Prosecution of William Reid, M.L.A.

I write in response to your letter of June 13. My attendance out of the province until June 18 prevented an earlier reply.

You express concern about protecting the integrity and continuity of original documents. Let me assure you that there will not knowingly be any interference whatever with the preservation and safekeeping of the documents that you have identified as being of interest to you.

I am mindful of the position in which you find yourself. It is an unusual one but I can assure you of the cooperation of the Attorney General in meeting the request that you make.

It is well recognized that the Attorney General has a statutory duty to supervise all prosecutions both public and private. This duty includes an obligation to ensure that the interests of accused persons are protected even in those private prosecutions where the Attorney General has determined it is not in the public interest to intervene.

The unusualness of this case is such that great care must be taken to see that a precedent is not established that could have serious implications in possible future unrelated proceedings but which bear on matters pertaining to criminal law. To that end, we have directed our thoughts to identifying a process that would clothe you with authority to have early possession of the documents you seek and clearly establish the manner in which the documents will be turned over to you and the purpose for which they will be used. Without these protections, the future demands and resulting implications of private citizens making similar requests to the Attorney General of the day could be dangerous and wide-sweeping for many, given the sensitive material often contained in such documents vis a vis the reputation, honour and integrity of citizens.

In our view, these protections are met if you obtain a subpoena requiring the production of the documents you seek. The requirements for a subpoena is justified as it establishes a precedent for future private prosecutions which ensures that:

1) a judicial officer (judge or justice) will have the opportunity to review the requests for

information by private prosecutors thereby ensuring that the requested information is necessary for a legitimate prosecution; and

2) it provides a mechanism for a potential witness, including private citizens, to challenge the subpoena in a superior court and to obtain a further judicial review on the issue of whether the requested information is required to support the private prosecution.

You have already met with Ernie Quantz, Director of Operations, Criminal Justice Branch, who has been designated the Ministry coordinator with respect to this matter. Mr. Quantz stands ready to be cooperative and to be of whatever assistance possible in an endeavour to meet your request in a responsible manner.

I have advised that the case has been adjourned to July 17 to Disclosure Court at the Provincial Court at 222 Main Street, Vancouver. We suggest that you apply for a subpoena as early as Monday, June 25 and I confirm that Mr. Quantz is prepared to appear with you and to speak in support of your application.

We believe a convincing argument can be presented as to why the subpoena should issue, both from the point of view of meeting the underlying purpose of Disclosure Court as well as on the strength of judicial authority that affirms the use of the relevant section of the Criminal Code allowing for the issuance of the subpoena in the circumstances such as exists here. I understand Mr. Quantz has outlined our position to you and has provided you with relevant judicial authority including the unreported decision of the Alberta Queen's Bench, Regina v. Gingras and references therein.

The issuance of a subpoena would clothe you with the authority to receive from the Crown the documents you seek. They would immediately be turned over to you.

I have been advised that the police, for reasons I understand, have declined your request to turn over to you the first of the three requested documents as listed in your June 13 letter to me. To be sure that we are accommodating you in every possible way with respect to meeting the full request you have made, we have sought and obtained from the police, approval for us to release to you our copy of the document that you request in point 1 of your letter. That would accompany the other documents referred to in the other two points in your letter once authority exists for us to act in this manner.

I trust you will see this as a reasonable course to follow. Without question, it is our view that this is also the course that ought to be followed.

If for some reason you decline, then with some reluctance, we would move in an alternative manner to accommodate you. That alternative would be to release to you the confidential information requested on your personal undertaking to ensure the following:

1) that during the course of the prosecution, you will seek to obtain only that information which is relevant to the prosecution;

2) that the information obtained by you will be released only to the Court during the course of the prosecution or to the defence counsel in accordance with the Attorney General's policy of full disclosure;

3) that once the prosecution is concluded, you will forthwith return all materials received and subsequent copies made to the office of Crown Counsel, 3rd floor, 910 Government Street, Victoria, British Columbia, and

4) that if you cease to act as counsel prior to the conclusion of the prosecution, you will forthwith return all materials received and subsequent copies made to the office of Crown Counsel, 3rd

floor, 910 Government Street, Victoria, British Columbia.

If you feel disposed to decline these proposals and have some alternative suggestion to make, please communicate it to us and we will give immediate attention to it.

I understand your position that the individual ministries of government are not seen by you as being severable and, hence, your request that this Ministry play a coordinating role to meet your needs. That request will be met by Mr. Quantz participating in the manner indicated and, in that way, it will not be necessary for you to be dealing with various people in government. To facilitate and coordinate your efforts, this reply should be treated by you not only as a response to your June 13 letter to me but also as a response to your letter of the same date to Mr. Marson. If you have written to any other persons in government, other than to Mr. Marson and me, please let Mr. Quantz know so he can facilitate matters.

The transcripts of the proceedings before the Comptroller General were produced at a cost of in excess of $6000. These will be released to you at no cost, however, we request that these transcripts and all other materials provided to you be returned to our office once this case has concluded.

Thank you for your attention to this matter. We look forward to hearing from you at your earliest convenience.

Yours truly

E.N. (Ted) Hughes
Deputy Attorney General

J.M. PETER FIRESTONE, B.A., LL.B
BARRISTER & SOLICITOR · NOTARY PUBLIC

PENTHOUSE SUITE
620 VIEW STREET
VICTORIA, B.C. V8W 1J6
TELEPHONE (604) 388-1113

RECEIVED
JUN 2 7 1990
DEPUTY
ATTORNEY GENERAL

BY FAX: 387-6224

27th June 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 66
DATE: Aug 27/90
KRH

Hon. E.N. Hughes, Q.C.
Deputy Attorney General
Ministry of Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4

Dear Sir:

re: Private Prosecution of William Reid, M.L.A.

Thank you for your letter of June 21st, 1990. Let me just say I appreciate the careful consideration that you have given to this matter.

I write to advise you that, on instructions, I am currently withdrawing the charge against Mr. William Reid, M.L.A. I do so regrettably, but I am of the view that continuing this prosecution against Mr. Reid is impossible.

First and foremost, your letter indicates the general proposition which has been made clear to me in this case which is that it is the duty of the Attorney-General to supervise all prosecutions. I took this case on the understanding that I was a prosecutor within the meaning of Section 2 of the Criminal Code. As a prosecutor within that definition, and as an officer of the court, I continue to be of the view that this case is no different from any other prosecution handled by your ministry, and accordingly there is no need to require a court order before relevant materials are disclosed to me.

I made requests, on instructions, for disclosure of relevant material. Your ministry has taken the position that I will not have access to these materials without a court order. I simply cannot accept the proposition that this is required. As a prosecutor within the meaning of Section 2 of the Code, and as an officer of the court, I see no legal impediment for voluntarily handing over the materials which were collated and collected by the R.C.M.P. and others relevant to this matter.

. . . 2

In your letter of the 21st of June 1990, you indicated that I should seriously consider using the provisions of the Criminal Code to obtain subpoenas for the relevant materials. I am of the view that Section 699 and Section 700 of the Criminal Code do not permit a judge of the Provincial Court, or a Justice of the Peace, to issue a subpoena duces tecum.

I read with some interest the case provided by your ministry, Regina v. Gingras, an unreported decision of the Alberta Queen's Bench, April 20, 1989. I am of the view that a Supreme Court judge (which was the situation in Gingras) probably does have the power to issue such a subpoena. However, a strict construction of Section 700 of the Criminal Code requires witnesses to attend at a hearing or other proceeding to give evidence and to provide relevant documents. It does not, in my opinion, permit the kind of thing suggested in your letter whereby subpoenas are obtained and documents are handed over. This gets back to my original point which is that I don't see any legal reason why I could not simply, as an officer of the court, be handed the relevant documents.

This, of course, raises another issue and that is: both your ministry, and myself as a private prosecutor, must have concern about a proper prosecution. The case no doubt met the requisite legal standard in that there was in law reasonable and probable grounds to believe an offence has been committed and of course this was confirmed by the R.C.M.P. position in this matter. The proper agency to do this prosecution was the Attorney-General's ministry and not myself. When confronted with what I will refer to as the "legal impediments" of having to get a search warrant on the one hand or a subpoena on the other, I found myself in an untenable position.

It is my opinion that if I went through a subpoena process, or alternatively a search warrant process, I would be open to collateral attack by the accused. I would be creating problems for myself as a private prosecutor which, in my opinion, should simply not exist.

In my opinion, the search warrant or the subpoena power would result in a tenuous legal process which would result in a series of collateral attacks by the accused, resulting in a prolonged prosecution way beyond the purview of the original intent of the prosecution.

. . . 3

In your letter of the 21st of June, you suggest that I make some alternative suggestion to the subpoena power. I simply write to indicate that it is quite clear to me from the position taken by the Attorney-General's ministry that I will not get these materials without a court order of some kind which, as I have stated herein, is unnecessary in my opinion. Accordingly it is my legal opinion that the best course of action is simply to withdraw the charge out of a sense of fairness to the accused when it is quite clear to me that I will not have the relevant materials to prosecute the accused without considerable legal wrangling and considerable negotiations. This, of course, goes far beyond the original purview of this prosecution that I anticipated, and accordingly I have recommended to my client that the case against Mr. Reid be withdrawn.

Thank you for your attention to this matter.

Yours sincerely,

Peter

J. M. PETER FIRESTONE

JMPF/jmb

MOE SIHOTA, M.L.A.
ESQUIMALT-PORT RENFREW
LEGISLATIVE BUILDINGS
VICTORIA, B.C. V8V 1X4
TELEPHONE: (604) 387-5723

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 67
DATE: Aug 27/90
KRH

CONSTITUENCY OFFICE:
633 GOLDSTREAM AVENUE
VICTORIA, B.C. V9B 2W9
TELEPHONE: (604) 474-1833

PERSONAL AND CONFIDENTIAL - HAND DELIVERED

July 11, 1990

Mr. E.N. Hughes, Q.C.
Deputy Attorney General
Ministry of Attorney General
Legislative Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Hughes:

I am writing to you in confidence and with the expectation that you will not share the foregoing with the Attorney General.

Today in the Legislature I will be rising on a matter of privilege. During the course of my motion of privilege, I will establish that the Attorney General violated the independence and impartiality of his office by tampering in the administration of justice relating to the Reid affair. In particular, I will demonstrate that the Attorney General discussed with a person who he knew to be in direct contact with defense counsel ways in which to embarrass the private prosecutor and the proceeding involving the member for Surrey-White Rock-Cloverdale. Furthermore, I will demonstrate that the Attorney General discussed with this individual strategies as to cross examination of the informant and offered to provide information upon which the informant could be cross examined.

In addition, I will demonstrate that the Attorney General then took an affirmative step to contact a reporter and seek to have that reporter make public information which the Attorney General thought would embarrass the private prosecutor.

Actions of the Attorney General raise questions as to whether the provisions of the Criminal Code relating to obstruction of justice have been violated.

2/...

Recycled Paper

As you can appreciate, the aforementioned represents a very serious allegation. I would therefore be grateful if you could attend at my office immediately after my motion of privilege and await my arrival so that I may brief you fully with respect to this matter and provide you with the evidence in my possession.

I fully appreciate the difficult position that this may put you in. However, I am sure that you understand the seriousness of the matter that I raise, and accordingly, I trust that you will be able to attend and discuss this matter with me.

Yours truly,

Moe Sihota, MLA
Esquimalt-Port Renfrew

MS/md

Recycled Paper

PROSECUTE INQUIRY
68
DATE: Aug 27/90 KRH

that holds a half-dozen cans together. I don't know how people could be more dedicated to doing that than those people. We recently had a special day at the liquor distribution branch in Vancouver to officially launch renewed activity in recirculating and reclaiming all of this waste product.

Very often there is criticism of people who work for government or do jobs for government. I want to stand here today and say that I'm proud of the people at the liquor distribution branch and the job they are doing, and so should all the rest of us in this House.

HON. MR. STRACHAN: Mr. Speaker, I wonder if I might have leave to make an introduction.

Leave granted.

HON. MR. STRACHAN: I notice in our gallery the president of the Cariboo Tourist Association visiting us this afternoon. Would the House please welcome Pat Corbett.

HON. L. HANSON: I would like the members of the House to join with me in welcoming to British Columbia over 1,000 athletes from all provinces in Canada who are participating in the Canadian Special Olympic Summer Games, which kick off tonight at B.C. Place Stadium in Vancouver.

The Canadian Special Olympics are held every four years, and this is the first time that British Columbia has hosted these games. There are nearly 200 athletes from British Columbia who have qualified for the many events, including swimming, track and field, rhythmic gymnastics, power-lifting, soccer and bowling.

I am certain that all members of the House will join me in wishing good luck to the 1,000 athletes of the Canadian Special Olympics.

MR. BLENCOE: On behalf of our side of the House, I would like to join with the minister in welcoming the 1,000 athletes from all over the country to these very special events. It is, I think, a great privilege for British Columbians in the next few days to witness the activities of the Special Olympics, which once again show to all of us that everybody has the ability to participate and that we are learning so much as the years go ahead in so many events.

All sides of the House, I am sure, welcome this event and wish them all great success.

Hon. L. Hanson tabled the audited financial statements for the Provincial Capital Commission for the year ended March 31, 1990.

Hon. Mr. Couvelier tabled the report of guarantees and indemnities for the fiscal year ended March 31, 1990, in accordance with section 56 of the Financial Administration Act.

TAPED CONVERSATIONS OF ATTORNEY-GENERAL

MR. SIHOTA: I wish to rise on a matter of privilege, or more accurately a matter of contempt of parliament.

Mr. Speaker, before I proceed I would just like to table with you the text of the comments that I intend to put forward, together with evidence that I will be referring to during the course of my comments, so that they form part of the official record.

That being done, let me say this. The material that I have placed before you raises the issue of whether the Attorney-General (Hon. Mr. Smith) has violated the independence of his office by discussing with a person that he knew to be in contact with defence counsel matters and strategies relating to the prosecution of the former Minister of Tourism, and whether by so doing the Attorney-General is in contempt of parliament.

Fundamental to our parliamentary tradition is the principle that an attorney-general should be independent and impartial with respect to any prosecution before the courts. He must be scrupulous not to involve himself in a prosecution. Professor Edwards, in a quotation that I provided you with, in a work entitled *The Law Officers of the Crown*, expresses the principle in some detail.

Interjections.

MR. SPEAKER: Order, please, hon. members. It's very important that the Chair be able to listen to the matter being stated, because the Chair will have to determine whether or not in fact a prima facie case exists. So I would ask all members to restrain themselves so that the Chair can listen to the matter. There is a sequence of events which have to take place any time a member wishes to rise on a matter of privilege, and the sequence is being followed.

MR. SIHOTA: Mr. Speaker, I should say that I have served notice to the Attorney-General of this matter, together with the text of the comments that I'm reading into the record now.

The Attorney-General, of course, has an obligation to be impartial and independent. The Attorney-General himself best expressed that requirement on May 2, 1989, when he described his responsibilities in this House as follows: "I want to say — through you, Mr. Chairman — that I will continue to do what I believe to be correct in the service of this office; I will apply to the best of my ability the law in an even way; and I will do so without having the imprimatur of my personal biases and my political biases placed upon it. That is what I was sworn to do, and that's what I will do."

I wish now to set out the material which speaks to the issue at hand. I should at the outset, however, advise Mr. Speaker that it is not my intention to raise the merits of the case against the former minister, but rather to put forward information as it relates to the responsibilities of the Attorney-General.

You will recall, Mr. Speaker, that the RCMP did recommend on two occasions that charges be laid against the member. The Attorney-General did not follow the recommendations. Subsequently, a justice of the peace issued a process on May 28, 1990, and compelled the member to attend in court on June 12, 1990, to answer the charge. Due to the Attorney-General's decision not to proceed with a public prosecution, the private prosecution was commenced by me. The first date for hearing of that prosecution was June 12, 1990.

On June 12, 1990, the Attorney-General engaged in a conversation with one that he knew to be in direct contact with defence counsel. I wish now to read to you a transcript of the main portions of an actual discussion which took place between this individual and the Attorney-General. Mr. Speaker, I will not be reading the entire transcript — I have tabled it for you as information — only the pertinent parts. The conversation which occurred on June 12 went as follows. This conversation is between the Attorney-General and an unidentified individual whom I shall be referring to as X. The reasons for this, Mr. Speaker, will become apparent during the course of....

Interjections.

MR. SPEAKER: Order, please. On a point of order, the government House Leader.

HON. MR. RICHMOND: Mr. Speaker, I would submit to you that on charges as serious as this, as this member alleges, the very least he could do is name names and verify the accuracy of the information he is putting forward. At the very least, Mr. Speaker, I would caution you to take into account the fact that he has not verified this information nor has he named names.

[2:30]

MR. SPEAKER: I still have to hear the basis of what the member has to say before I can make a decision. The Attorney-General is not present today, but I would advise all members that prior to the Chair making a decision, there will be an opportunity for the Attorney-General to stand in this House and make a statement on the matter as well. In the meantime, I must hear the matter before I can begin to deal with it. I would ask the member to continue.

MR. SIHOTA: X says as follows: "And he's hired a dimwit as a lawyer."

The Attorney-General: "That was my next thing. Who is this guy?"

X: "A nobody. He's a guy that...."

The Attorney-General: "He says you guys used to use him, and he's a friend of Murray's."

X: "He is, but Murray fired him off the case because he wasn't any good. That was the Frisbee case. That was the murder on a cruise ship."

The Attorney-General: "Yes."

X: "And he couldn't handle the pressure and didn't do any work, so Dennis fired him and put Ernie on the case. The guy almost had a nervous breakdown."

The Attorney-General: "How can we get that out?"

Mr. Speaker, the comment, "How can we get that out?" indicates — and it will be important in terms of what I will put forward to the House in a minute in terms of other evidence — that the Attorney-General took more than a passing interest in the information that was forwarded to him. You must determine, Mr. Speaker, whether the foregoing establishes a prima facie case as to the violation of the independence and impartiality on this count. There are others. The House, of course, Mr. Speaker, must decide on the question of contempt.

The conversation continues.

X: "Oh well" — then there's laughter — "I'll tell you who it is."

The Attorney-General: "We could do anything we want now."

X: "Yes, he's well known in the legal community as not being much of a heavyweight, and I'll tell you something else he's doing. He has bragged over the last few months that when..." — Mr. Speaker, I have to refer to my own name here, or I'll just say that reference is made to my own name — ..."is the A-G, that he'll be the new ADM, criminal justice."

The Attorney-General: "Oh, is that right?"

X: "Yes."

The Attorney-General: "Oh, I love it."

X: "Yes."

The Attorney-General: "Really?"

X: "Yup."

The Attorney-General: "Who in the hell has he said that to, I wonder?"

X: "Well, apparently he has boasted around, because Ernie mentioned it to me over the last week because we were trying to.... We were speculating in terms of who..." — again, they mention my name — "...would get, and he was one of the names. We thought, well, Vickers and Orris. But then it came down to Firestone because of this brag that he's been making."

Attorney-General: "Jeez, is that true?"

X: "Yeah, he's got no.... I shouldn't say no respect. I mean, he's a likable enough guy...."

MR. SPEAKER: Hon. member, in a situation like this, what is required is for the member to state his case briefly, table his material and for the Chair then to determine whether or not a prima facie case exists. If the Chair determines that such a prima facie case exists, then all of the details that you may have or wish to bring forward would be brought forward at the committee at that time. As you have tabled a full copy of your statement for the Chair, the Chair will have ample opportunity to read all of the material which you have now read. So I would ask you to briefly state your case and then advise me about the next motion you have to make.

MR. SIHOTA: Mr. Speaker, I seek some guidance from the Chair on this. I'll cease reading from the transcript, except to draw your attention to the salient portions of it. Is that...?

MR. SPEAKER: If you've tabled a total copy of the transcript, you can rest assured that the Chair will read the entire transcript.

MR. SIHOTA: Fine. That being the case, let me continue, given that the documents now form part of the public record.

Mr. Speaker, there are a number of matters that I wish to bring to your attention. First, as I have already mentioned, is the comment of the Attorney-General: "How can we get this out?"

In the same conversation there is then another discussion between the Attorney-General and this individual. During the course of that conversation, the Attorney-General suggests to this individual that the informant — who is me — could be called before the courts. You will see that in the information. He then suggests to that individual information upon which I can be cross-examined. He then talks in the transcript about how that information would benefit the defence. He then talks to the individual in question about the details of various strategies for cross-examination.

Then it becomes apparent that the individual he is talking to is a conduit between him — the Attorney-General — and the defence counsel, Mr. Butler and Mr. Anderson. Mr. Speaker, I wish specifically to draw that to your attention again. I won't quote from it, but on page 3, fourth item from the bottom, a conversation appears with respect to X, where X makes it very clear that he was discussing the various strategies the day before with the former minister's lawyer.

What emerges, then, in totality with respect to this first conversation is that the Attorney-General did as follows: he discussed with a person, whom he knew to be in direct contact with defence counsel, ways in which to embarrass the private prosecutor in the proceeding against the former minister. He then went on to wonder how he can make public the information which relates to the prosecutor. The Attorney-General expressed opinions to this person who was in contact with defence counsel as to how the informant may be called as a witness and strategies to cross-examine the informant — myself.

In a second conversation that I have also attached — which I will not read — he engages in a conversation with a reporter. The conversation with the reporter is designed to further the comment that I have brought to your attention. In other words: "How can we get that out?"

The conversation is between a reporter and the Attorney-General, and the Attorney-General suggests to the reporter that they would have the story of the year if they could get out information with respect to the nervous condition of the private prosecutor and to the brag that he was purported to have made. Again, the comments in that regard are clear.

Mr. Speaker, I have provided you with transcripts and evidence of conversations that took place between the Attorney-General and others. For verification, should you require it, I would be more than pleased to provide you with the actual tape recording of the conversation.

It is my submission, together with a legal opinion to the effect that there is nothing improper or illegal with the material as it was recorded and provided to me by a third party....

It is my submission that the totality of the material that I have forwarded to you demonstrates on a prima facie basis that the Attorney-General violated the standard of independence and impartiality expected of him with respect to this prosecution involving a colleague of his. In so doing, the Attorney-General not only offended the integrity of his office, but also brought the administration of justice into disrepute.

Accordingly, it is my view that the Attorney-General should resign. However, in the context of this privilege motion, I wish now to serve the notice of motion that I intend to present, and that motion reads....

MR. SPEAKER: Order, please.

MR. SIHOTA: Sorry, I....

MR. SPEAKER: No, don't file it either. Just advise the Chair that you are prepared to table the motion if a matter of privilege is found.

MR. SIHOTA: Mr. Speaker, I wish to advise you that I intend to table the motion if a prima facie case is found.

MR. SPEAKER: It is possible and desirable to have you tender the motion with the material that you table with us, but not to read it.

MR. SIHOTA: Yes.

MR. SPEAKER: I would remind the House that the Attorney-General is not present, and that prior to the Speaker making a decision on this matter, the Attorney-General will have an opportunity to rise in his place and state his case.

I'd also advise the member and all other members that, of course, you would normally expect that the Chair take some time to deliberate over a serious matter such as this. Therefore I will hold the matter in abeyance until such time as I am prepared to bring forward my case.

HON. MR. RICHMOND: On a point of order regarding the member's point of privilege — I mean this with the greatest of respect to the Chair, and I have no intent of lecturing the Chair — I just urge you, Mr. Speaker, because of the seriousness of these charges, to consider the source and how this information was obtained, whether it was obtained in a legal fashion. Prima facie, it doesn't seem to this member that it was. Also I urge you to identify who Mr. X is. In charges that are as serious as this, I urge you to consider all of these factors.

MR. SPEAKER: I think all members are well aware this is indeed the most serious challenge the Chair has had to date. Next order of business.

Orders of the Day

HON. MR. RICHMOND: Mr. Speaker, I call committee on Bill 35, the Forest Amendment Act, 1990.

FOREST AMENDMENT ACT, 1990

The House in committee on Bill 35; Mr. Pelton in the chair.

Section 1 approved.

Title approved.

HON. MR. RICHMOND: Mr. Chairman, I move the committee rise and report the bill complete without amendment.

Motion approved.

The House resumed; Mr. Speaker in the chair.

Bill 35, Forest Amendment Act, 1990, reported complete without amendment, read a third time and passed.

HON. MR. RICHMOND: I call second reading of Bill 48, Forest Amendment Act (No. 2), 1990.

FOREST AMENDMENT ACT (No. 2), 1990

HON. MR. RICHMOND: Bill 48, Forest Amendment Act (No. 2), 1990, introduces several amendments to the Forest Act that will permit more effective management of British Columbia's forest resources in terms of timber administration and protection from forest fires. So in moving second reading, I just wish to make a few comments on the various aspects of this bill.

First, in terms of timber administration, Bill 48 will authorize the disposition of pulp-quality timber on tree-farm licences to holders of pulpwood agreements. Currently the Forest Act authorizes the disposition of timber on tree-farm licences to licensees under the small business forest enterprise program and to woodlot licences. These licences are primarily for sawlog-quality lumber.

A number of tree-farm licences, however, contain timber that is below current sawlog standards and is not currently being used by the tree-farm licence-holder. It is in the interest of British Columbians to make this timber that is not being used by tree-farm licence-holders available to other parties, specifically to holders of pulpwood agreements. Without Bill 48, our ability to dispose of currently unused pulp-quality timber stands within new and existing tree-farm licences to holders of pulpwood agreements will be severely hampered, and perhaps precluded.

Bill 48 will also enable the Minister of Forests, with the consent of the holder of a pulpwood agreement, to consolidate, subdivide or otherwise amend a pulpwood agreement. Currently there is no clear authority for changing the geographic boundaries of a pulpwood agreement once it is issued. However, consolidation or other types of amendments are sometimes in the public interest, as these changes will often allow more effective and efficient administration by the Ministry of Forests, and more effective and efficient management and use of the timber resource by the pulpwood agreement-holder.

In addition, Bill 48 clarifies the wording of the Forest Act regarding overlapping pulpwood agreements. It is desirable to be able to enter into more than one pulpwood agreement over the same land area, because different pulpwood processors sometimes have different raw material requirements. For example, two pulping processes might use different tree species. Overlapping pulpwood agreements ensure that the highest level of wood utilization can be achieved.

Bill 48 will also ensure that the costs of basic silviculture — reforestation — following timber-harvesting on non-replaceable licences will be borne by the licence-holder. By law, the holders of all major licences must, at their own expense, carry out basic silviculture following harvesting. In the case of a replaceable major licence, there is little chance that the licence-holder would try to avoid this requirement because of the risk of not getting a replacement licence.

[2:45]

However, the Ministry of Forests has issued — and continues to issue — non-replaceable major licences to create or maintain economic opportunities. These licences are issued for timber that does not contribute to the annual allowable cut of a timber supply area because of its quality, size, species or location. Because these licences are not going to be replaced, there is less incentive to carry out basic silviculture, particularly towards the end of the term of the licence. An unscrupulous company could harvest the timber in the latter years of the licence and then move on, leaving the cost of basic silviculture to be borne by the people of British Columbia. Bill 48 prevents this potential problem by requiring a non-replaceable licence-holder to provide financial security in the form of a lump-sum deposit or levy per cubic metre to cover the cost of basic silviculture as a condition of the licence.

Mr. Speaker, Bill 48 provides a more consistent method for calculating trespass charges for unauthorized cutting of Crown timber. These trespass charges are based on the price of the timber, including an average of bonus bids paid for timber sold under the small business forest enterprise program. This program was expanded into tree-farm licences in 1988, but the average of bonus bids used for trespass charges does not currently include these timber sales.

Province of
British Columbia

Ministry of
Attorney General
OFFICE OF THE
DEPUTY ATTORNEY GENERAL

COPY

MEMORANDUM

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 69
DATE: Aug 27/90

To:

MEMO TO FILE

Date: July 11 1990

File:

This memorandum is dictated at 5:pm July 11, 1990.

At about 2:20 or 2:25 this afternoon I received a phone call from a chap who identified himself as Dan Tatchuk (I believe), a researcher in the NDP Caucus offices. We had agreed that we had talked previously on other matters. He said that a messenger was on the way to my office to hand deliver to me a personal and confidential letter from Mr. Sihota and he wanted me to receive the letter personally and that I would find in the letter a request that I attend on Mr. Sihota in his office following his making a statement of priviledge in the House this afternoon. I tried to press Mr. Tatchuk for more information and he gave me an indication that what he would be revealing in the House was some alleged wrongdoing on the part of the Attorney General involving the REID case. I felt somewhat pressured by this phone call in the sense that I was being asked to do things and didn't know what on earth the gentleman was talking about and so I asked him "would you please tell me more of what you are talking about, I've never heard of what it is that's in issue here, and I can't respond or commit myself until I know what you are talking about and I asked the question is there some impropriety being alleged against me?" I was told that there was not, that it solely related to the Attorney General and that when I got Mr. Sihota's letter I would get some insight into what this is all about and Mr. Tatchuk said his number was 387 0869 and he would stand by for a call from me after I had received the letter if I wanted to phone and, I guess, indicate whether I was coming down or whatever.

Shortly after I hung up the messenger did arrive and hand delivered to me the sealed envelope marked for me as Deputy Attorney General, personal and confidential, and hand delivered. This was Mr. Sihota's two page letter so marked of July 11, 1990. I had pretty much read through it when the phone rang and it was Sarjit Marshall from the Minister's office. Bob Edwards was in and out of my office in that we had had a meeting a few minutes earlier and he was doing talking on the telephone, etc. about that meeting and translating a French letter from Quebec into my dictaphone. He was here and I indicated to him that I had a letter from

Sihota but I did not make it available for him to read nor have I made it available at this point in time for anyone else to read. I took Sarjit's phone call and she turned up the speaker in the House where Sihota was making his point of priviledge. I listened in but I came into the middle of it and I really wasn't fully conversant with all of the things he was talking about.

After clearing a few things away and finishing my lunch I did leave for the Buildings and went directly to Mr. Sihota's office arriving there at about 3:20pm. Mr. Harcourt showed me into his (Harcourt's) office where I waited for Sihota to come and he arrived there, I would say, about twenty minutes to or quarter to four. At that time, Sihota told me he had just come from a press conference and at that press conference he had released, as he had done in the House I gather, a transcript of a couple of conversations, that are together on one clip in my file, involving the Attorney General and a lawyer, he thought from this Ministry, and the second part of it related to a transcript with a press gallery reporter, Margot Sinclair. Sihota gave me a tape in which he said there were recorded many conversations from Bud Smith's cellular telephone. He said that he had only released the first one of these because it is the one that he thinks may give rise to a possible obstruction of justice charge on the part of the Attorney General and he highlighted the areas that he had reference to in yellow highlight ink. He gave me many transcripts but said the rest didn't reveal alleged criminal wrong doing but there was, in his view, very compromising conduct on the part of the Attorney General recorded and could be very embarassing to him. He said that these conversations had all been picked up by a scanner from the telephone over the period September 1989 to 1990 and he said that he does not know who made the recordings but he would be prepared at a later date, if necessary, to identify the party who gave the tapes to him. He said he had them for four weeks and the transcripts from the tapes were typed in his law office. He said the conversations, besides being with the lawyer, were also with Margot Sinclair on a number of occasions and also with his wife Daphne. Sihota said he has discussed the wiretap law with Glen Orris and with Barry Long, Barry Long being a wiretap law expert. He indicated that he would let me have that opinion but I don't have it and perhaps I should make some inquiries for it.

He said he was satisfied there had been no violation of the Code, the first reason being the conversations took place on a cellular phone and, second, these conversations took place after the Attorney General often noting that they may be intercepted or recorded; ie the conversations.

Sihota commented on the Smith/Sinclair relationship as he saw it but I made no comment on that or, really, the other matters, because I haven't read the transcript nor had I heard the tape.

Sihota emphasized that one of his concerns was that it was apparent that Bud Smith had had a conversation with a conduit, as he called it, who played such a role as between the Attorney General and defence counsel in the private prosecution matter and he laid great stress on that fact.

I received the information from Sihota. I told him that I knew what my responsibility was and that I would meet that responsibility. I never committed myself to an investigation or any other course of action except that I would look at it. I may well have alluded to the fact that I would be drawing on some advice within the Criminal Justice Branch and I think the question did come up whether there was a charge that could be laid or not and I may well have said that you never have a charge without an investigation but whether there be one take place here I made absolutely no comment upon.

I left Sihota's office after, I would think, about half an hour with him and I then went to the office of the Deputy Minister to the Premier, David Emerson as he had called me about the matter just before I left for the Buildings and I told him in a brief conversation that I was aware of some problem I would be looking into it and I would be in touch with him before the afternoon was over. On the way, in the hall, I ran into Keith Baldry and his first question to me was, "had I met with Mr. Sihota?" and I said "yes". He then had other questions for me and I simply declined to answer them and may well have said that I know what my responsibility is as Deputy Attorney General and I would be acting in accordance with what I saw that to be. I may have said something general like that but I gave no answers to any other questions that he brought up.

I then went to see Emerson. He was available and waiting for me. We started a conversation. Gerry Lampert came in and I outlined, in a general sort of way, what had transpired in the Sihota office but I was careful not to get into matters of law that I think are for our Ministry. What I did bring up was what Sihota had told me that the decision in the NDP Caucus or wherever was that, concurrently with me being brought into the picture and handed the material by Sihota, the NDP was to have the same material go to the Premier through Mark Rose but Sihota said that the Premier had declined to see Mark Rose, being so annoyed about the matter. That may or may not be the case but what I did tell Lampert (Emerson having left about 6 or 7 minutes after we started because he had to meet with the Premier and the President of the BCMA) was that I didn't think it was proper for me to refer to documents and tapes that I had received but if he wanted access, I thought the Mark Rose route was the correct one. In fairness to Lampert, he wasn't pressing me for anything and he agreed that that was so. I did indicate to David Emerson before he left that I would get back to him with some preliminary thoughts, perhaps by 6:30 or so this evening. I had alerted Ernie Quantz to stand by to be ready to go into a discussion on this matter and get in Bill Stewart and Bob Edwards.

I returned to my office about 4:40 and there was an urgent call from the Attorney General. Extremely important was the note. It had come in at 4:28. I phoned him about 20 minutes to 5 and he wanted to know what my views were about the propriety, if not the illegality of the tapping of the phones and I told him that was one matter we would be looking into and also that we would be looking into what Mr. Sihota believes to be possible interference with the course of justice. The Attorney General said he would have to meet the press and what had I indicated up to this point because he didn't want to be inconsistent with anything I had said. I simply told him that my statements were that I knew my responsibilities as Deputy Attorney General and I would meet those responsibilities as best I could as I had tried to do over the past several years and he seemed comfortable with that. I did acquaint him with the fact that a press call had come in from Jerry Young of Canadian Press who had told my staff that Young had said he had just spoken to Sihota who said that he had a meeting with me and that I "will be launching an investigation into Bud Smith". Young wanted to confirm this. I told Smith that I had not said I was launching an investigation but, rather, I would be giving my attention to the matter and meeting my responsibility as I saw it. During the course of that conversation, the Minister, much to my surprise, identified that the lawyer on the tape was Bill Stewart. I had thought all along it was someone who had worked for us at one time and was no longer with us but that is not the case and, that being so, while I am now about at 5:20 to leave for a meeting with Quantz, Stewart and Edwards I think I should identify that fact at the outset and not have Bill in on the decision making as to what steps we should take, and what we should advise David Emerson and what I should advise the Attorney General. Once there are further developments I will record them.

enh:jp

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DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 70
DATE: Aug 27/90

E.N. (Ted) Hughes, Q.C.
Deputy Attorney General
Press Conference
July 12, 1990

There has been many a speech started with the words, "As unaccustomed as I am ..." and they are often known to be expressed in a very false environment but I can assure you that they're expressed with total sincerity today, never having addressed a press conference before in my life. However I propose this morning as we start this matter, and appreciating we're here about serious business, to read you a letter that I drafted, signed and delivered to the Attorney General on the 24th of March 1990. The reason for doing that I will explain when I've read it and I have copies of it here should it be of interest to anybody. It may or may not be.

On the 24th of March 1990 I wrote to the Attorney General as follows:

> Re: William Earl Reid
>
> The final decision that Reid would not be charged with an offence under the Criminal Code was made by me. In making that decision I was meeting a responsibility that rests with the office of the Deputy Attorney General of British Columbia.
>
> Many statements about the Reid matter have been publicly reported over the last three days. Representative of those statements is "That the decision not to charge Mr. Reid was tainted by the appearance of coverup", from the Globe and Mail, of March 22nd.
>
> That is a serious allegation that undercuts the very foundations of the criminal justice system in this province and, surely, must shake public confidence in that system. That being so, this letter is not the proper medium to either explain my actions and those of other senior officials in the Ministry, or to comment on the stated allegation. Very obviously, however, immediacy in addressing the matter is required. In our discussions you have agreed with me that this is so. I have decided that the responsible course is to recommend

> that you forthwith have a Judicial Inquiry constituted to investigate in a public forum the process giving rise to the decision made in this instance.
>
> If you accept that recommendation I have a request to make of you. Nearly five months ago I wrote to you (with copy to Deputy Minister Rhodes) setting out my reasons, which were totally unconnected to the Reid matter, why it was time for me to relinquish the position of Deputy Attorney General and assume less onerous responsibilities. We subsequently agreed on April 30, 1990 as a date for that to occur. I now ask for the opportunity to withdraw my resignation. The honourable course is for me to stay at the helm of the ship at least until the propriety and integrity of events and decisions taken over recent weeks have been pronounced upon, one way or the other, by such respected Jurist that is decided upon.
>
> If you retain sufficient confidence in me to grant this request I can assure you and, through you, the people of British Columbia that with the loyal support of the dedicated and honourable staff at all levels of responsibility in the Ministry of the Attorney General that I believe I enjoy, that confidence will neither be abused nor misplaced pending receipt of the report of the Judicial Inquiry.

Now, let me say that my advice was taken that there be an inquiry into that matter. For good reasons that I only know of secondhand, the Judiciary thought it inappropriate that they assume that role and also through some negotiations or some approaches that I was not part of, the Ombudsman, not in his capacity as such but rather as a Commissioner took on that responsibility. And as you know the commission was established to enquire into the very matter that I recommended to the Attorney General on the 24th of March and I will have more to say about that inquiry in a few moments...

However, I read you that letter so that the groundwork is there for it to be clear to all British Columbians that there are steady hands of honour and integrity at the helm of the justice system of this province and I speak not only of the... and it would be presumptuous of me to speak only of myself in that regard. I am speaking, in the main of a loyal and dedicated staff that I have working for me who have through a number of years I've served been of great help in their support to me and I know that I enjoy their confidence and support and I am able to communicate to the people of British Columbia that steady as it goes, the justice system in this province is a fair, equal and impartial system that is administered in that way without fear or favour of any kind.

Confidence and respect in the system is a cornerstone of our entire society. The system of justice must be fair and impartial and it must deliver as far as is humanly possible equal justice to all of our citizens. That is the history and the tradition of the justice system of this province and I tell you that that is the state of our justice system here today. That said, let me speak to the events of the last 20 hours.

Yesterday afternoon, following an invitation that I accepted to attend at the office of the justice critic, I was handed a letter from that gentleman in which he reviewed what he was doing in the House at the time that the letter was delivered to me yesterday afternoon and in that letter he made reference to the fact that he would be establishing that the Attorney General violated the independence and impartiality of his office by tampering in the administration of justice relating to the Reid affair. He went on in his letter to say that actions of the Attorney General raised questions as to whether the provisions of the Criminal Code relating to the obstruction of justice had been violated.

(Can someone provide anyone with a glass of water in this place?)

Now, that letter I received mid afternoon yesterday from Mr. Sihota. I understand, though I didn't hear it presented, that the Attorney General made a statement in the House this morning and you will be familiar with that and the consequences of it. I understand that it has also been indicated that "X", as referred to yesterday in discussions and media reports, is the Assistant Deputy Attorney General of Criminal Justice, Bill Stewart.

Pending resolution of the matter that came to my attention yesterday afternoon through the process that I have just indicated, I now tell you that Mr. Stewart at this moment is vacating the position of

Assistant Deputy Attorney General, Criminal Justice, while this procedure that I am about to announce takes place. That position in an acting capacity will be filled by a senior member of the Criminal Justice Branch of the Ministry, Mr. Hal Yacowar, who is the Director of Policy and Legal Services in that Branch. He has been with the ministry since 1973 and is one of my senior and respected advisors in the Criminal Justice area.

There will be, commencing immediately, an investigation by senior police investigation personnel in "E" Division of the Royal Canadian Mounted Police with respect to the allegations that have been raised by the justice critic and that are referred to in his letter to me that I mentioned this morning.

I will be meeting today with the Acting Commanding Officer of "E" Division and delivering to him all information that has been delivered to me in this matter.

The report to Crown Counsel that comes in every instance where there has been an investigation will in this instance be delivered directly to my colleague the Deputy Attorney General of the Province of Alberta, Mr. Neil McCrank, Q.C.

Mr. McCrank has made his professional life in the criminal law area. He practised in the city of Toronto from 1969 to 1973. He was the Assistant Crown Attorney in the Regional Municipality of Durham at Whitby, Ontario from 1973 to 1979. From 1979 to 82 he was the Special Prosecutor with the Alberta Attorney General's Ministry in Edmonton. From 1982 to 1984 he was the Director of the Special Prosecutions Branch of the Alberta Attorney General in Edmonton. From 1984 to 1990 he was the Assistant Deputy Minister in charge of Criminal Justice for the Province of Alberta and earlier this year was appointed Deputy Attorney General of the Province of Alberta.

With the assistance of the charging policy of the Ministry of the Attorney General of the Province of British Columbia and such other assistance as Mr. McCrank is disposed to call upon, he will make his recommendations, with respect to this matter, to me, on the issue of whether charges ought to be laid. I will follow thoserecommendations. That process, in my judgement, is as fair and as impartial as I can arrive at. It is a process that will surely sustain the confidence in our system that I've spoken of this morning and that we must continue to enjoy in this province. And I believe that it is particularly so when I tell you that I have taken the course that I have and that I have announced this morning without any consultation with anyone in government about what I am announcing here today. I let it be known to government personnel that I would be meeting the media here this morning and making an announcement, but I have had no inquiry from anyone as to what I would be saying or doing. And I think that fact must surely add to the substance and the integrity of what I have endeavoured to communicate this morning.

There are two or three other matters I wish to address. One is that I have spoken this morning to the counsel retained to the Owen Commission and I have made my recommendation that that Commission should once again be adjourned until such time as the events that I have spoken of this morning have been dealt with. Whether that recommendation will be followed of course is not for me.

I want to tell you that the ministry is looking at the legality or illegality of the matter of telephone conversation interceptions that occurred in this instance. We've had a number of inquiries on that issue and I'm prepared to make no preliminary comment or view on the matter other than to say that it is being looked at, is being researched and once we've reached such conclusions that we're satisfied with, within the Ministry I will make them known publicly and what consequences, if any we see flowing from those conclusions.

The other matter I would address before I take such questions as you wish to put to me, is that needless to say my commitment is to stay in my present position, notwithstanding any personal preferences I had expressed many months ago for what I thought then were good and valid reasons until this matter has reached finality.

Questions and Answer period follows...

Questions from the Media to Mr. Hughes

Question: ...Mr. Smith, is the bottom line Mr. Smith is being investigated for the obstruction of justice?

Hughes: I am dealing with the matter on the basis of the communication that was received by me from Mr.Sihota.

Question: ...Bill Stewart what's, is he, is he suspended?

Hughes: Bill Stewart, Bill Stewart will, is, has relinquished the position of Assistant Deputy Minister of Criminal Justice and will remain with the Ministry doing other work pending some resolution of this matter.

Question: ... several at once....

Hughes: Just one at a time please.

Question: Have you reviewed the rest of the tapes that Mr. Sihota has turned over to you and have you turned those over to the RCMP?

Hughes: I said in my statement that everything that I have in my possession will be turned over to the authorities.

Question: Have you reviewed those tapes yourself or the transcripts of them?

Hughes: I'm cognizant, in a general way, of the content.

Questions: ...several at once, again...

Hughes: I guess I just better bring you to order here and we'll go around the room. Go ahead.

Question: Now that this investigation has been launched, is it possible in the Legislature for it to be discussed, debated or raised in Question Period in anyway or is it sub judice?

Hughes: I would suggest that you should take that up with the gentlemen that preside at the front of the Legislative Assembly.

Question: Will the Alberta Deputy Attorney General's report and recommendations be made public?

Hughes: Well certainly the recommendations will be made public and with respect to the report I will certainly be speaking to it and it may very well be made public. I don't know what's going to be in it.

Question: Will you also be asking him to make the decision on whether or not the telephone intercepts are illegal?

Hughes: That request has not at this point been made. If I were to conclude that there was reason to do that, I would be prepared to, but that issue in my view doesn't have the urgency of what I dealt with in the last number of hours, but that's something we can consider.

Question: Mr. Hughes, with due respect, a lot of people would suggest that justice must not only be done but must also be seen to be done. Due to the fact ...

Hughes: I agree with that.

Question: ... you are a civil servant working for a government, Mr. McCrank is a civil servant working for a government that has very friendly relations with the B.C. government, do you feel that in this circumstance that he is the appropriate person to investigate this as opposed to, let's say, a Judge or somebody who will be completely impartial in the public's mind?

Hughes: Mr. McCrank will not be investigating this at all. The police will be investigating it and Mr. McCrank will furnish a legal opinion with his recommendations and I am confident and satisfied with the man's integrity and standing in his profession it will be seen to be a fair and impartial adjudication on the report that is made available to him.

Question: ... Sir, why not a judge?

Hughes: Well, because, because we are talking about whether criminal charges should be laid and that would be... you would never get a judge to accept such an assignment. A judge is the arbitrator of whether an offence has been committed as and when facts are presented to him. You would never get a judge to do that. Entirely inappropriate.

Question: Was it Mr. Stewart's decision to step aside or was it your request?

Hughes: Mr. Stewart and I had a conversation and we were both of the view that was the appropriate thing to do, simultaneously expressed.

Question: I would like to know if Mr. Stewart will be doing and is he receiving the ADM's pay during this investigation?

Hughes: I have not addressed those matters in the time available to me. Mr. Stewart will be kept on the payroll in the Ministry and his duties yet are to be determined by me and be worked out. Won't be today. I'm going to be meeting with the Commanding Officer of the RCMP this afternoon which I consider to be a priority matter over that.

Question: ... do you any idea of the time frame? when we might be expecting the recommendations?

Hughes: I would expect it would not be long, in this sense that there is, I don't foresee a long investigative route here such as might take place in investigating a drug smuggling case or something like that. We have the tape. We have the transcript of what was said. I frankly do not see a long investigation. I've been assured by the Acting Commanding Officer that the matter will be dealt with expeditiously by the investigating officers.

Questions: Sir, I can appreciate you trying to protect the integrity of the system, but why do you have go outside of B.C. during that process and is there a precedent for inviting someone from another jurisdiction to decide upon a matter like this?

Hughes: Yes, as a matter of fact Alberta and Manitoba have an arrangement whereby they use each other in situations of this kind. We don't have such a protocol, but I'm happy to say I received a very positive response from Mr. McCrank who obtained the concurrence of his Minister, the Attorney General of Alberta, to condult this for us. I could ... there are reasons why we went out. One of the very clear ones is that, that many if not most people knowledgeable in the area of criminal law in this province have in some way already been involved in this whole Reid matter and we want somebody with a totally fresh look to the matter and I'm comfortable and confident it's an appropriate step to take which I have taken on my own.

Questions: One other thing , Sir, this whole thing stems from the Reid matter as you said ...

Hughes: Quite.

Question: ...it had a lot of input. It won't go away. It seems you stand by the decision that you wrote in March that it was right not to charge the guy?

Hughes: You'll hear me at the Owen Inquiry as and when, and I will be there with a full accounting for my actions in the matter. I'm ready, willing, waiting and anxious, but I think it, unfortunately, once again has to be postponed.

Question: Just to clarify, you looked at a transcript yesterday and see something in there that justifies this kind of investigation that at first blush needs further investigation .... what specific comments or actions or alleged actions that you saw in the transcript warrant this kind of investigation?

Hughes: Well, Mr. Sihota has given me his letter. He pointed out in highlighted pen those areas that he felt in that transcript, that was released yesterday, what supported his views that he has expressed in that letter. Clearly those are the items that ... that... that he's concerned about and I understand him .... we're lawyers each of us and I understand his point ... and I was able to grasp the nature of what he was putting to me.

Question: I appreciate that, but I was just wondering if you could .... tell us ... further...

Hughes: You've got ... you've got ... you've got the transcripts and you've got the....

Question: .....I'm wondering if you could say what highlighted portions you....

Hughes: Well they are matters that relate to what's in his letter and if you want to have a copy of his letter I'll make it available to you.... he wrote this letter to me "personal and confidential"... I spoke to him late last night and said I think the time has come when I would like to treat this letter other than "personal and confidential" and he said you have my full authority to do so. So I will read it to you. ....his whole letter reads in this way ... incidentally there are a lot of you who want to ask questions. I am here for another 15, 20 minutes if you want so I'll give you all a change. Don't leave.

(Sihota's letter)

> "I am writing to you in confidence and with the expectation that you will not share the foregoing with the Attorney General."

Now he explained to me last night that in so stating that he was wanting to express the wish that I not confer with the Attorney General prior to accepting an invitation that's in the concluding portion of his letter. He said this:

> "Today in the Legislature I will be rising on a matter of privilege. During the course of my motion of privilege, I will establish that the Attorney General violated the independence and impartiality of his office by tampering in the administration of justice relating to the Reid affair. In particular, I will demonstrate that the Attorney General discussed with a person who he knew to be in direct contact with the defense counsel ways in which to embarrass the private prosecutor and the proceeding involving the member for Surrey-White Rock-Cloverdale. Furthermore, I will demonstrate that the Attorney General discussed with this individual strategies as to cross examination of the informant and offered to provide information upon which the informant could be cross examined.

> In addition, I will demonstrate that the Attorney General then took an affirmative step to contact a reporter and seek to have that reporter make public information which the Attorney General thought would embarrass the private prosecutor.
>
> Actions of the Attorney General raise questions as to whether the provisions of the Criminal Code relating to obstruction of justice have been violated.
>
> As you can appreciate, the aforementioned represents a very serious allegation. I would therefore be grateful if you could attend at my office immediately after my motion of privilege and await my arrival so that I may brief you fully with respect to this matter and provide you with the evidence in my possession.
>
> I fully appreciate the difficult position that this may put you in. However, I am sure that you understand the seriousness of the matter that I raise, and accordingly, I trust that you will be able to attend and discuss this matter with me. Yours very truly, "

I accepted his invitation. You have the transcript. He has highlighted in that letter what he thinks is in it and that's all I intend to say. I don't plan to read those transcripts to you.

Yes.

Question: Mr. Hughes, is this a precedent like move for a senior civil servant to take an action such as your taking without approval of government and especially in light of the fact that the Premier is now the Acting Attorney General?

Hughes: I hadn't heard that.

Question: Mr. Smith said that outside the House today. You sort of looked shocked. Maybe I should ask you that. Are you concerned that the Premier has taken that position considering his problems with Brian Smith....

Hughes: My information is that your information is incorrect, Sir.

Question: ...who is the Acting Attorney General....

Hughes: I understand that will be announced this afternoon. It wouldn't be for me, but I... but I, I ... but from what I have been able to pick up around here, I don't expect to be reporting to the Premier as my minister. I may be ... what you tell me is that I may be in for a surprise, but I think not.

Now who hasn't had a chance here .... Ok who hasn't then we'll get back to the ...

Question: If you, if you're going to have a new Attorney General this afternoon, if that new Attorney General believes that the actions you have taken are fundamentally wrong what will your course of action be?

Hughes: Well, wouldn't it be his course of action ... pause... if he thinks I've done the wrong thing?

Question: You're not prepared to back down from this?

Hughes: No, absolutely not.

Question: Sir,..

Hughes: Yes.

Question: Mr. Smith, Bud Smith had a news conference yesterday afternoon after the charges were raised in the Legislature. He mentioned in passing that he had a brief conversation with you that he initiated. He called you. Can you disclose what he talked about there?

Hughes: No I don't remember. But I will tell you one thing I've come in this job to know the value of a memo to file and I was sure dictating late last night. And I suspect that ... that the record of that conversation is probably on my file but I've had so many phone calls in the last three hours that I can't tell you what the content of that conversation was right now.

Question: The Attorney General mentioned to the press last night about the break-ins in his office and his apartment, where do those events fit into the events you are setting into motion here?

Hughes: Those would be matters for investigation by the authorities and I haven't initiated anything in connection with those incidents. I've ....

Question: Are you aware of any connection between them....

Hughes: I know nothing about it. I know this, that I had a new suit of clothes hanging in the Vancouver office waiting for my first appearance at the Owen Inquiry and the night after that breakin, that was the first thing that came to my mind. The thief obviously wasn't interested in a new suit of clothes of my size so beyond that I really can't tell you.

Question: Mr. Hughes, two questions .... just so I understand the subject of the RCMP inquiry or investigation is that concerned solely with the tapes...... tabled in the House yesterday and will it be all the tapes that Mr. Sihota has?

Hughes: Well everything that was turned over to me will be turned over by me to the police and I understand from Mr. Sihota that the tape he gave me is a ... is a unified tape of all the series of various conversations that were recorded.

Question: Will they also investigate how they going, how they were collected, how they were ...

Hughes: .... well, well I would assume, that sure ... I would, at least I would think that the, the, the police investigating officers are going to want to know what background they can get hold of. I would, I would think that would be a germane part of the exercise they're going to undertake for the purpose that I've indicated.

Question: Second question, do you know if Mr. McCrank has every had any dealings personally with Mr. Smith in any way? meetings? Do they know each other?

Hughes: Oh, I think so. Yes, we, we, we have once or twice a year, the Attorneys General and the Deputies come together and their staffs and while Mr. McCrank is new as, as Deputy he has been around as the Assistant Deputy Criminal Justice so sure I'm sure they've met and I don't know what you want me to read into that, but ...

Question: But are you concerned about that?

Hughes: No, not at all. I'm ... I'm... I'm ... I'm confident of the integrity of Mr. McCrank. The fact that he knows Mr. Smith... if you can tell me he's had some dealings and arrangements with him, of ... whatever business or kind, or whatever, then I would pick up my ears, but the fact that they have sat in the same meeting room ... and ... doesn't give me any concern whatsoever as to the fairness and impartiality that I'm going to receive from the assignment he's taken on.

Question: Mr. Hughes, Mr. Smith also indicated that he has reason to believe that his telephone and not (?) cellular phone was bugged or may have been bugged. Do you know anything about that? Do you think this has any bearing on this particular case?

Hughes: I don't know anything about that.

Question: Sir, the Hovernment House Leader this morning reserved his right to launch a contempt of parliament citation, exactly what Sihota did yesterday, against Mr. Sihota regarding the source of his information, his cellular phone calls and the taping and the bugging and the intercepts and whatnot. Are these parliamentary hearings or cases or allegations going back and forth in the House going to impact on the investigations that you've launched?

Hughes: ...I'm really unaware what went on in the House this morning. I was not in the building.

Question: Can they fight this out in the Legislature while the....

Hughes: They can't fight out in the Legislature whether the law of the country has been broken.

Question: That's up to the...

Hughes: That's up to the courts after a proper investigation.

Question: Sir, investigations ... centring on legality, legal issues you can't really come down with any sort of determination about the honour of the office and perhaps the public perception of, of whether or not Mr. Smith has done anything to bring the office in to repute. That's not really technically legal matter is it? Just wondering how much of the air this investigation on a legal basis can clear when there is this sort of parliamentary suspicion argument on the other side.

Hughes: What investigation?

Question: The RCMP's investigation.

Hughes: That is related totally to the question whether criminal acts have been committed.

Question: Hmm. Hmm.

Hughes: Nothing more.

Question: Given the fact that the Attorney General is going to be ... the appointment of the Attorney General is going to be announced in just a few hours, why not wait those few hours and coordinate .... the direction the investigation should take ... does that make any sense?

Hughes: Because I'm holding the responsibility as the chief bureaucrat, if you like, in the Justice System of this province. The events, obviously, as I said in that letter of March 21st, the suggestions of a coverup in this matter themselves represent a serious allegation that undercut the very foundations of the Criminal Justice System in this province and surely must shake public confidence in that system. In my view the events of the last 24 hours fit entirely into that category and I consider that I'm meeting my responsibility in that regard by meeting you here this morning and making this announcement.

Question: I'm wondering if you can clear up the sequence of events for me. The Attorney General called you last night and asked to see a copy of Mr. Sihota's letter. You indicated that you talked to Mr. Sihota late last night ...

Hughes: Correct

Question: ... to get permission to divulge that knowledge to people other than yourself ..

Hughes: That's correct.

Question: The Attorney General also stated that he had drafted the statement he gave in the House today and read it to his colleagues at a caucus meeting last night which broke up prior to 10 pm. Can you outline the sequence of events, so that ... because you said that you talked to no one about this and he also indicated that he asked you to start an investigation?

Hughes: I said I talked to nobody about what I proposed to layout to deal with the situation as it exists, but I had numerous phone calls about this matter yesterday. Hell the phone never stopped ringing.

Question: Did you divulge the contents of Mr. Sihota's letter to Mr. Smith prior to getting permission from Mr. Sihota?

Hughes: I have never divulged the contents of the letter to Mr. Smith because by the time I got Mr. Sihota last night it was 10:30 and I was on my way home when he returned my call that I had left a message on his recorder. And he told me he called me immediately he came into his house and I'm sure he did and I did not see the Attorney General after that and I have not seen the Attorney General after that.

I guess that pretty well wraps it up. Thank you very much.

(Chatter around spelling of names, availability of copies of letters, possibilities of photographs, etc. make up the final minutes of the tape.)

Transcribed by: Beth Macdonald 17.06.90
Public Affairs Division
Attorney General

Final Edit by: ENH, July 23, 1990

PROSECUTE INQUIRY

5

EXHIBIT # 71

DATE: Aug 27/90

KRH

July 15 1990

MEMO TO FILE

This memorandum is dictated at 10:00 a.m. Sunday, July 15, 1990.

In this memorandum I will endeavour to record as many of the highlights that I can recall or have specific reference to by way of notes relating to my involvement from the time the last memorandum was dictated until this date. For the rest of July 11 all of July 12 and 13 events moved so swiftly that it wasn't possible for me to get back to record.

I went to the meeting in the Criminal Justice Branch late in the afternoon on Wednesday, July 11. Present were Stewart, Edwards, Quantz and myself. Hal Yacowar may have been there early on. I had committed myself to get back to Emerson and the Minister by around 6:30 to let them know what our views were and what should happen next but the issue was far too complicated for us to reach any consensus by that hour. We did pause to see the 6pm evening news on television to get updated on what was going on. It became apparent during our discussions that Bill Stewart and I were of the same mind, that it was going to be impossible for him to carry on in his existing position until matters clarified. I would have turned to Ernie Quantz as his acting replacement but, in that Ernie's name is mention on the tapes, I felt that could be open to criticism and therefore determined that I would be requesting Hal Yacowar to fulfil this function.

Many options were being discussed as to how this matter could and should proceed. It was thought desirable to bring Malcolm Macaulay into the discussion in that he was advising us and acting on our behalf with respect to the Owen inquiry. Without resolving how the matter was going to be determined, I left for the Attorney General's office somewhere, as I recall it, in the vicinity of 7pm. I had already checked to find that he was still there and awaiting word from me. Sarjit was still in the office. The others agreed to stay behind and give consideration to various matters that we had discussed such as whether there should be a police investigation or whether some other kind of investigation would be more appropriate and who should make decisions about the allegations in Sihota's letter of tampering with justice, etc.

The Attorney General, on my arrival, was engaged in private telephone conversations and I would say it was close to about 25 minutes before he and I met. During that time, I went down to the Legislative Dining Room and they kindly supplied me with a light lunch as I had not had much to eat all day. I met with the Attorney General for about an hour, I would think, and to say that he was depressed and despondent is almost to understate it. During the conversation, I let him know that my view was that he would have to stand down. I think it is fair to say that he had pretty much come to that conclusion himself although he did raise alternatives and whether that was the only course open, etc. I told him that regardless of the strength or otherwise of the case that Sihota made with respect to tampering with justice, I felt I had no alternative but to place the matter in the hands of the RCMP for investigation. I believe the Attorney General, at this point, had a copy of the tape transcript that had been released by Sihota but it is possible I may have given him a copy but certainly by the time I left the office he had it. My only uncertainty is whether he had it before I arrived. I did not on this occasion give him copies of the other tapes as they had not been released. I did indicate to him that it was my understanding that the full set had been offered to the Premier's office through some contact Mark Rose had made there so I didn't consider their release to the Attorney General to be impossible and I alluded that perhaps the best route for him to get them if he wanted them was through the Premier's office in that they were available but I had the feeling he wasn't, at that point, anxious to see what had not been released and had he asked for copies of mine I may well have made them available to him.

At this point in time, I was still working with the Sihota letter that was marked "personal and confidential". I did, however, acquaint Smith with the seriousness of Sihota's allegations by making reference to tampering and his suggestion that what had gone on here could well have been a violation of the obstruction of justice section in the Criminal Code. I gather from the press conference I had and some news reports I have read that the Attorney General made reference to the fact that he had read that letter at that time. That is not correct but I did make reference to it in endeavouring to have the Attorney General appreciate the serious position that I was in, in having to make a proper determination as to what to do in light of what Mr. Sihota had delivered to me.

I returned to the office about 9:pm, that is Bill Stewart's office. Stewart, Quantz and Edwards were out having supper and it was probably 9:30 or 9:45 when they returned. In the

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meantime, I had made a number of attempts to reach Mr. Sihota. I started those attempts in the security office in the front of the Legislative Buildings after I left the Minister's office and eventually I was able to track down his home phone number and left a message on his tape recorder to call me. He did return my call in the Criminal Justice Office somewhere between 10:15 and 10:30 that evening. I told him my concern was whether I was free to make use of the letter he had handed to me earlier in the day in light of its "personal and confidential" tag. He quickly said that he very definitely was prepared to have me make such public use of that letter as I wanted, that his point in marking it personal and confidential was such that I would not reveal it until such time as I had my visit to his office and he didn't want me dealing with his letter with the Attorney General before he had the opportunity of talking to me. I thanked him for his prompt return of my phone call and that concluded it.

During the course of the evening, I tossed around the possibility of who could be of assistance to us in giving legal opinions and looked first at the British Columbia scene and then cast beyond that and discussion of personnel in Ontario and so on came up, but my view was that McCrank seemed to be the most appropriate for obvious reasons and, while I indicated that I was leaning that way during the course of this late night meeting, the decision I made was mine and arrived at the following morning.

I came to my office on the morning of July 12 and I had a number of calls to make including to the RCMP when I talked to Acting Deputy Commissioner Palmer and I talked to McCrank. Palmer agreed to put an experienced investigator on the matter and he agreed to call back to me what his views were and who it would be. I had raised with him whether we should be calling someone in from outside the Province as this possibility had surfaced in my meeting the evening before with staff personnel. Palmer obviously was not supportive of that proposition in light of the complement of competent people he had available. I reached McCrank and he readily said he would accept this assignment subject to clearance with his Minister.

Before I left the office at about 10:30am to hold the press conference, both Palmer and McCrank had returned calls to me, Palmer advising as to who the investigating officer would be, and McCrank accepting the assignment. Up to about 10:30 I was busy preparing my notes for delivery at the press conference and I have those notes and will have a copy of the transcript of the press conference prepared. I arrived at the Buildings about 10:45am and I went to

Emerson's office who, incidentally, I had never touched base with because when I tried to get him the evening before he was out for a walk and it was ultimately agreed that Bob Edwards would talk to him. At Emerson's office, I found Bob Edwards already there as I expected he would be. Emerson was there, Lampert came in, and when I was in the corridors the Premier came and shook hands with me and we both sort of said we had an important and serious job on our hands and we just had a firm exchange of understanding between us that we each were doing our job the best we could and no specifics of what I was there for or what I was going to do next was raised by either the Premier or by me. Gerry Lampert did ask what I propose to do and I told him that I felt I wished to announce that in the press conference and I wished to be free to say that I had had no discussions with our Masters in the Legislative Buildings and he readily accepted that. Earlier that morning, I had Eli Sopow phoned and alerted him to call the press gallery together for 11am.

The press conference went forward and is fully recorded. After the press conference, I indicated my desire to meet with the new Minister who would be announced that afternoon. Before I went down to the press theatre, I had learned that Mr. Fraser, the Solicitor General was to be the appointee.

About 12 noon, in Emerson's office without Emerson present, Fraser came in and I acquainted him with the steps I had taken and announced that morning and told him that from the questioning after my press conference, I would expect the press would be asking him whether he agreed with what I had done and so that he would be in a position to form his view of that and answer such questions, I thought I wanted to meet with him and acquaint him with my steps.

At this time, we agreed we would have a meeting at 9 am the next morning to discuss how our joint offices would work. I made arrangements for the Attorney General's secretary to attend and Mr. Fraser said he would look after having his staff members at that meeting.

From the Premier's office, I travelled to Vancouver by ABC and had meetings on other matters but took a cab from downtown Vancouver about 3:45pm and, as per my agreement, I attended on Assistant Commissioner Palmer at 4pm. I gave to him copies of all of the transcripts and I highlighted for him the yellow highlights that Sihota had done on the copy of the released tape transcript that he had delivered to me. Palmer took possession of all of these but felt it was best that I keep the tape and hand it directly next week to the investigating officer. I agreed that I would do that. Obviously, the Assistant Commissioner is having concerns about continuity matters.

We discussed the fact that he would move the matter along expeditiously and one point he made clear was that the police, without any request would likely, on their own initiative, look at the question of the bugging, if you like, of the telephone calls and what, illegal or otherwise, implications that practice involved.

I made some telephone calls from another office in the RCMP office and left the building at about 4:50 or 4:55pm (10 or 5 minutes to 5).

On Friday, July 13, I was engaged nearly all day in the Juan de Fuca interviews but the one matter that should be recorded was that about 3:30 pm on Friday afternoon, I was called out from those interviews by former AG Smith who was on the telephone. He wanted to know what was on the other tapes as he felt the time had come when he should have them and if I was free to let him have copies without breaching any confidence with respect to which I had them. I was satisfied that there were not such confidences and I could release them so I had my secretary fax the transcript of the tapes to Mr. Smith's constituency office in Kamloops.

We discussed the matter generally and Mr. Smith told me that he never felt lower in his life, was terribly despondent. I advised him that the best thing to do is to get away from it all and get to some remote holiday area and include his family if that was appropriate. He told me Daphne was standing up well to it and that part of the matter did not pose a problem for him. He might do what I suggested but it was too uncertain to know what would happen in light of events as they are unfolding and he certainly was a very, very, seriously depressed person.

Of course, there had been many developments in the media and the printed press since all this got going and I am endeavouring to keep full copies of everything in the office here.

enh:g

PROSECUTE INQUIRY
EXHIBIT # 72
DATE: Aug 27/90

MEMO TO FILE July 17, 1990

This is dictated at 10:45 am Tuesday, July 17.

The Executive Committee met this morning and we had a fairly extensive discussion about the current matter. We took a look at the assignment that McCrank now has on his desk and how the matter of whether there had been a violation of the law in connection with the recording of conversations should be handled.

It was agreed that when Bob Edwards and I attend on the RCMP this afternoon, we endeavour to have them complete the alleged "tampering" investigation as speedily as possible. It is understood that the report from Crown Counsel will go to McCrank but I am going to have to be in touch with McCrank to get him a copy of our policy with respect to charging and perhaps offer to meet with him and give him any other guidance that he may wish and perhaps he should be invited here to meet with Hal and with me. This is a decision I will have to make before long.

On the other question of the recordings and their publication, Jill Wallace has reached her conclusion and we decided that that should go to the Attorney General today with a covering note from me and that Bob and I should be prepared to discuss with the police the basis of our decision which is that there has been no violation of the law insofar as we have been able to ascertain. It has come up that this matter will be investigated by the police on their own volition and Bob and I both think that if there is going to be a report to Crown Counsel on this issue, that I should ascertain if McCrank is prepared to take on that assignment also and then subsequently have that report also go to him. We had considerable discussion whether Jill Wallace's opinion setting forth our views should be furnished to McCrank and I think it is fair to say that we have not resolved that. While I think professionally it would be put to, undoubtedly, proper use, we are dealing with a perception matter here and the fact that we have furnished our opinion to McCrank might be perceived by some as trying to influence him. Nonetheless, it is a helpful resource on the law and I have left it undetermined whether we will make this available to McCrank. However, before we even get to that, I would have to engage him for this further purpose and that can just go on hold for the time being - certainly, until such time as we get the other documentation into his hand or until such time as we meet with him preparatory to getting him to work on his first assignment.

When I have the time to proof the press conference, I think I will see my commitment to make a statement in due course about what is going to happen with respect to the second matter. The one thing we decided this morning was that it would be premature for me to make any statement on this second matter, at this time. An appropriate time might well be as and when I meet the press to announce the McCrank recommendations on the first assignment. However, that does not have to be decided at this point in time.

Reviewing my notes of the Executive Committee meeting, I notice that with respect to the second matter, we felt it important that no final position or opinion be taken until we had the police version of the facts. When I say that, I do not mean the Crown Counsel report would come here but if there is going to be one we might have some idea as to where they were heading and then we could bring McCrank into that second aspect of it at that point in time. At this point, it seems as though it would be premature to make any decisions with finality.

The other point to record is the fact that I should soon write McCrank as to the details of his current assignment but I think I will be in a better position to do that after we have had our meeting with the police this afternoon. When I get back to the office later in the day or this evening, I will endeavour to put a memorandum on the file as an outgrowth of that meeting.

DICTATED at 8:15 pm, Tuesday, July 17, 1990

Bob Edwards and I attended this afternoon on Deputy Commissioner Wilson, Assistant Commissioner Palmer and Chief Superintendant J. Sabastian (OIC, Federal Operations, 657 West 37th Avenue, Van V5Z 1K6). The latter is the investigating officer in the Smith tapes matter.

The first thing I did was deliver the tape to Chief Superintendant Sabastian. This is the one which was handed to me on July 11 by Mr. Sihota and the one I had in Vancouver on July 12 but Assistant Commissioner Palmer suggested I wait until today and hand it to the investigating officer which I did.

I emphasized the importance of having this investigation move with dispatch. I pointed out that the whole justice system is sort of on hold pending this investigation and then pending the disposition of the recommendations in it and, finally, awaiting the holding and reporting of the Owen Commission of Inquiry. The Chief Superintendant said he fully understands this and, with the information he has now, did not think the investigation should take long at all. I think a fair interpretation of his conversation was that he thought it could well be wrapped up by the end of next week. This would take it to about July 27.

Chief Superintendant Sabastian proposes to take his report and any recommendations he has directly to Edmonton for delivery to Neil McCrank, whom he knows personally having worked with him for about 20 years in Alberta.

I indicated that I would be in touch with McCrank quite soon to communicate to him our policy guidelines for our charge approval system and making any other requests of him that are appropriate at this time. I must give attention to that during the current week and having talked to Neil, I should write him and in the course of my conversation, I should ascertain if he wishes to meet with Hal or with me or just one of us and, if so, would he like to travel to Victoria or what his pleasure would be.

We then got on to discuss the matter of the legality of the taping and distribution of the conversations. Bob Edwards gave an outline of the opinion that had been arrived by Gill Wallace on July 17 and which is on file. We had decided that we would not make this available at this time but we were free to discuss our views. We made available to RCMP, a copy of the legal opinion that was given to Mr. Sihota and which he made available to me. Bob Edwards and I also decided, contrary to what we earlier thoughtl, that we would not, at this time, make Gill's opinion available to the Attorney General. It is clear that the police are going to be looking into this matter but as secondary to the tampering with justice issues. I indicated that if I got an indication that they were going to have a police report for Crown Counsel on this or any other related matter, I would give very serious consideration to asking Mr. McCrank to act with respect to that matter as he is doing with respect to the tampering issue. This the officers seemed to think was a good idea.

enh:g

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 73
DATE: Aug 27/90
KBH

July 20, 1990

Mr. Neil McCrank, Q.C.
Deputy Attorney General
Ministry of Attorney General
9833 - 109 Street
Edmonton, Alberta
T5K 2E8

Dear Mr. McCrank:

Re: Allegations of Obstruction of Justice Arising from Conversations Involving the Attorney General

I confirm our telephone conversation of July 19, 1990 in which we clarified a number of issues surrounding your acceptance of the referral to render charging decisions in relation to the subject noted matter.

In particular, I confirm the following:

1. The referral to you for charging decisions may be in two parts and encompass two timeframes.

   (a) The police are expediting their investigation into the allegations of obstruction of justice. Their investigation may be complete as early as July 27. Following their investigation, the Report to Crown Counsel will be referred directly to you. I understand that, unless complications arise, you foresee being able to make your charging decisions within two weeks after receiving the Report to Crown Counsel.

Should you require more time, however, I would request that you advise me of the new timeframe in which you would expect the decisions to be made.

(b) The police have also indicated their intention to investigate other allegations of criminality arising from the interception and taping of the conversations. I do not know whether a Report to Crown Counsel will be prepared on these allegations but if Reports to Crown Counsel are generated by the police following their investigation of these allegations, they will also be referred to you for your charging decision in due course.

2. Should anything further be required in relation to the investigation, you will communicate directly with the investigating police team under the direction of Chief Superintendent John Sebastian. We wish to ensure the complete independence of both the investigating police officers and you. Therefore, in light of the sensitivity of this matter, any communications pertaining to the investigation should occur directly between you and the police.

The only exception to that will be an analysis, presently being prepared in the Legal Services Branch of the Ministry, of legal issues bearing on the matter addressed in 1(b) above. It will be completed by the end of next week and will be sent to you for assistance in dealing with the variety of legal questions that could be before you for consideration.

3. Your charging decisions will be based upon the usual charging standards applied in British Columbia. A copy of the applicable guidelines is appended to this letter. If you wish to discuss the guidelines, our Mr. Hal N. Yacowar, Acting Assistant Deputy Attorney General is available to discuss them with you, at your convenience.

4. Your charging decisions will be final and we will comply with whatever recommendations you make.

5. You will advise me directly of your charging decisions.

I wish to reiterate my sincere appreciation to you for agreeing to act in this matter. While I appreciate that interprovincial referrals of charging recommendations have occurred in the past, cases such as the present one underline the value in being able to call upon senior decision makers in other provinces for a truly impartial and independent evaluation of significant cases where decisions must be made in an atmosphere free of any perception of even a hint of improper influence.

I look forward to your decisions.

Yours very truly,

E.N. (Ted) Hughes
Deputy Attorney General

PART I PROVINCIAL COURT (ADULT)

CHAPTER 1 QUALITY CONTROL OF CHARGES

INTRODUCTION

Amongst the most important of Crown Counsel's duties is the exercise of effective quality control. It is mandatory that this function be carried out rationally, objectively, and efficiently. The procedures set out herein are designed to facilitate achieving these objectives.

In order to create a streamlined operation, the amount of paper retained and the amount of filing done in Crown Counsel offices should be reduced to a minimum. With few exceptions, files are not opened until charges are approved. Generally, reports are returned or sent to other agencies for those agencies to act upon them without retaining a copy in the Crown office. All Reports to Crown Counsel (RCC's) are indexed with a brief description of the status as a reference for tracking and phone inquiries.

A. CHARGE STANDARDS

The charge-approval counsel examines the allegations to determine whether there is a substantial likelihood of conviction; and if so whether or not the public interest requires a prosecution of the accused, on this occasion.

1. Substantial Likelihood of Conviction

In determining whether or not a charge should be laid, counsel must first conclude that it is likely that there will be a conviction after considering all relevant matters including the likely defence, if it is apparent. **There must be significantly more than just a prima facie case.**

If counsel is to accurately assess the likelihood of conviction, the Report to Crown Counsel (RCC) must provide an accurate and detailed statement of the evidence available. The following are the basic requirements for every RCC:

(a) A comprehensible description of the evidence supporting each element of the suggested charge(s);

(b) Where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;

(c) Necessary evidence check sheets;

(d) Copies of all documents required to prove the charge(s);

(e) A detailed summary or written copy of the accused's statement(s).

There are cases where the RCC will not comply with the quality control standards. This may happen when the allegations are complex and serious, and/or the accused is in custody, and his/her (continued) detention is necessary to protect the public. These cases should be extremely rare. In any event, counsel should not seek to detain a person in custody without sufficient written material from the police to justify detention.

2. Public Interest

Counsel must next determine whether the public interest dictates a prosecution. Hard and fast rules cannot be imposed and flexibility in decision making at the local level is essential if the Ministry is to respond to the legitimate concerns of each community.

There are, however, a number of factors counsel should consider in assessing the public interest in a prosecution:

(a) The nature and seriousness of the allegations;

(b) The personal circumstances of the accused, including his or her criminal record;

(c) The likelihood of achieving the desired result without a court proceeding, including an assessment of available alternatives to prosecution;

(d) The harm caused to the victim, if any;

(e) The cost of a prosecution compared to the social benefit to be gained by it. This will include considerations such as the degree to which this offence (as opposed to this offender) represents a community problem which cannot be effectively dealt with otherwise. The important obligations are to:

(i) Make the decision; and

(ii) Communicate with those affected so that they understand the reasons for the decision even if they do not agree with it.

B. CHARGE REJECTION

Suggested charges are rejected because:

- More information is required prior to making a final decision; or
- The facts do not disclose a substantial likelihood of conviction; or
- A prosecution is not warranted on discretionary grounds.

1. More Information Required (Counsel's Responsibilities)

If further information is required:

(a) The "returned" box on Page 1 of the RCC is checked;

(b) The report is dated and initialed by counsel;

(c) The reasons for returning the file are provided to the investigative agency in the "comments" section on Page 1 of the RCC. Additional memoranda or letters setting out these reasons are generally to be avoided;

Province of British Columbia
Ministry of Attorney General

Criminal Justice Branch
CROWN COUNSEL HANDBOOK

TITLE	DATE	CANCELS	No.
POLICY	10-15-86		QUA 1

SUBJECT	REFERENCE / CROSS-REFERENCE
Quality Control	REFERENCE: CROSS-REFERENCE: WEA 2

Quality control refers to a system in which all criminal and provincial charges are viewed and approved by experienced Senior Crown Counsel before the Informations are sworn. This ensures that the quality of criminal charges is maintained and that the necessary investigative material is available to assist the Crown in undertaking the prosecution of such charges.

Quality control is effective ministerial policy within the Province of British Columbia. This policy further ensures that the final decision as to which charges will proceed in court rests with Crown Counsel.

The general guidelines for approval of charges are:

1. Substantial likelihood of conviction; and

2. prosecution warranted in the public interest.

In considering the "public interest", the following factors are relevant:

(a) The nature and seriousness of the allegations;

(b) the personal circumstances of the accused including the accused's criminal record;

(c) the likelihood of achieving the desired result without a court proceeding, including an assessment of the available alternatives to prosecution;

(d) the harm caused to the victim; and

(e) on balance, the social benefit to be gained by the prosecution.

Province of British Columbia
Ministry of Attorney General
Criminal Justice Branch

DRAFT

CROWN COUNSEL POLICY MANUAL

TITLE	DATE	FILE No.	No.
POLICY	10-01-89	55100-00	QUA 1

SUBJECT: Quality Control - Charge Approval

REFERENCE: Cons/Rev
JRC #60

CROSS-REFERENCE: QUA 1.1
QUA 1.2

Charge Standards

Allegations must be examined to determine whether there is a substantial likelihood of conviction; and if so, whether the public interest requires a prosecution of the accused.

1. Substantial Likelihood of Conviction

In determining whether a charge should be laid, counsel must first conclude that it is likely that there will be a conviction after considering all relevant matters including the likely defence, if it is apparent. There must be significantly more than just a prima facie case.

If counsel is to accurately assess the likelihood of conviction, the Report to Crown Counsel (RCC) must provide an accurate and detailed statement of the evidence available. The following are the basic requirements for every RCC:

(a) A comprehensible description of the evidence supporting each element of the suggested charge(s);

(b) where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;

(c) necessary evidence check sheets;

(d) copies of all documents required to prove the charge(s);

(e) a detailed summary or written copy of the accused's statement(s).

.../2

DRAFT

There may be cases where the RCC will not comply with the quality control standards. The RCC should then be returned to the investigator with a request for additional information before a charge is approved. If the accused is in custody, Crown should not seek to detain the accused in custody without sufficient written material from the police to justify both the charge and the detention.

If the offence is serious and there is sufficient evidence to charge the detained accused but insufficient information to determine Crown's position on release, resort may be had to s. 516 to adjourn the show cause. This should be rare and used only where it appears necessary to protect the public.

2. Public Interest

Counsel must next determine whether the public interest dictates a prosecution. Hard and fast rules cannot be imposed and flexibility in decision making at the local level is essential if the Ministry is to respond to the legitimate concerns of each community.

There are, however, a number of factors counsel should consider in assessing the public interest in a prosecution:

(a) The nature and seriousness of the allegations;

(b) the personal circumstances of the accused, including his or her criminal record;

(c) the likelihood of achieving the desired result without a court proceeding, including an assessment of the available alternatives to prosecution;

(d) the harm caused to the victim, if any; and

(e) the cost of a prosecution compared to the social benefit to be gained by it. This will include considerations such as the degree to which this offence (as opposed to this offender) represents a community problem which cannot be effectively dealt with otherwise. The important obligations are to:

  (i) make the decision; and
  (ii) communication with those affected so that they understand the reasons for the decision even if they do not agree with it.

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 74
DATE: Aug 27/90

August 1, 1990

Mr. Neil McCrank, Q.C.
Deputy Attorney General
Ministry of Attorney General
9833 - 109 Street
Edmonton, Alberta T5K 2E8

Dear Mr. McCrank:

I write further to my letter of July 20. In that letter I informed you that an analysis was being prepared by the Legal Services Branch of the Ministry pertaining to the matter of possible criminality arising from the interception and taping of conversations. This document, dated July 17, has been completed over the signature of Gillian P. Wallace and is enclosed. Also enclosed is an analysis on the same matter prepared by James W. Jardine, Q.C. of the Criminal Justice Branch of the Ministry. These opinions are referred to you pursuant to my reference to this phase of the case in the July 20 letter.

With reference to possible charges arising out of the interception and taping of the conversations, I wish to confirm that it is the wish of the Ministry that you render charging decisions with respect to that aspect should the reports you receive from the police deal with that aspect. Insofar as the time factor is concerned, it is the hope and expectation that your consideration of those questions would not delay your decision with respect to the obstruction of justice allegations which we trust will be available to us prior to mid month.

Yours very truly

E.N. (Ted) Hughes
Deputy Attorney General

Encs.

bcc: Bob Edwards, Q.C.
Hal Yacowar

British Columbia
Attorney General
OFFICE OF THE
DEPUTY ATTORNEY GENERAL

910 Government Street
Victoria, British Columbia
V8V 1X4
Telephone: (604) 387-5211
Rapicom: (604) 387-6224

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 75
DATE: Aug 27/90

TO: LEGISLATIVE PRESS GALLERY MEMBERS
Parliament Buildings

Re: Events of July 11-12, 1990

In response to inquiries being made to my office, I would advise that it has been and continues to be my expectation that I will receive the report of the Deputy Attorney General of Alberta sometime between August 15 and 25. I have no knowledge whatever of what that report will contain nor do I expect to know until the report is delivered to me.

I will promptly thereafter make known what has been recommended and meet Legislative Press Gallery members in much the same manner as I did on July 12, 1990.

E. N. (Ted) Hughes
Deputy Attorney General

August 15, 1990

Province of
British Columbia

Ministry of
Attorney General
OFFICE OF THE
DEPUTY ATTORNEY GENERAL

MEMORANDUM

Fifth Floor, 910 Government Street, Victoria, B.C. V8V 1X4 Telephone: (604) 387-5211 Rapicom: (604) 387-6224

MEMOS TO FILE

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 76
DATE: Aug 27/90

August 16, 1990

File: Smith

Re: Visit by ENH at RCMP HQ, Friday, August 10, 2:30 pm

On this occasion, I met with Chief Supt. Sebastian and Insp. MacAulay at their request as Alberta has asked for my views on one issue only.

That issue related to my relationship and conversations with the Attorney General surrounding which of two letters would be sent to Peter Firestone on June 21 responding to Firestone's request for documents to enable him to proceed with the private prosecution.

I agreed that Quantz and Stewart had urged upon me the second letter which included the alternative option of an undertaking. I was aware of Quantz's view that Firestone's keenness for a letter only giving the subpoena option was such that he read into it that Firestone was clearly looking, on behalf of his client, for a way out of the prosecution.

I advised the officers that I did take the two letters to the Minister. I told the officers, however, that I never was keen on the second letter although I was not outright in my objection to it when meeting with Quantz and Stewart because I was still mulling it over in my mind in that I had respect for their advice and opinions. By the time I had arrived at the Minister's office, I had pretty much concluded that there was little point spending three pages or more setting out why we wanted a subpoena and how we thought we could get one and how we would assist in getting it and then, all of a sudden in a paragraph on the last page, saying but if you do not want to go that route then we will give you the documents with an undertaking. To me, it sounded ridiculous because the request was for the documents and if he could get them with an undertaking, why would he ever accept the option of going for a subpoena with respect to which it took us three pages to recite the detail?

I told the officers that it was the Attorney General's decision but his view very much accorded with mine. It was

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not a long conversation. I did acquaint the Attorney General with the fact that Quantz and Stewart's view was that the second letter should go but I was not enthusiastic about that option and the Minister thought the first letter that was drafted should go but he emphasized, as he has done throughout, there should be a paragraph, as there was, that if the subpoena option for some reason was not seen as acceptable and he had some other alternative that we might consider, then a request be contained in the letter that he come back to us before he takes any other action. I saw to it that such a paragraph was in the letter and it was delivered on that basis.

That was all the officers wanted to know and I acquainted them with those facts and that brought our interview to an end.

enh:g

Alberta
ATTORNEY GENERAL

Office of the Deputy Attorney General

9833 - 109 Street, Edmonton, Alberta, Canada T5K 2E8 403/427-5032

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 77
DATE: Aug 27/90

PRIVATE AND CONFIDENTIAL

August 22, 1990

Mr. E.N. (Ted) Hughes, Q.C.
Deputy Attorney General
5th Floor, 910 Government Street
Victoria, British Columbia
V8V 1X4

Dear Mr. Hughes:

On July 12, 1990 you engaged me to provide you with a report as to possible charges that might result from an R.C.M.P. investigation into allegations that the former Attorney General of British Columbia, Bud Smith, Q.C., had interfered with the administration of justice in the William E. Reid matter.

I have now received a full and complete brief from the R.C.M.P. and am in a position to report to you.

TERMS OF REFERENCE

As a result of our telephone conversations on the 12th and 19th of July, 1990 and your letters to me of the 20th of July, 1990 and the 1st of August, 1990, I understand my engagement as follows:

1. *I am to provide you with a report on possible criminal charges in two areas:*
    a) *allegations of attempt to obstruct justice that arose as a result of intercepted and recorded telephone conversations between the former Attorney General of B.C., Bud Smith, Q.C., and others.*

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b) allegations of criminal conduct arising from the interception, recording and disclosure of the above noted telephone conversations.

2. My report on possible criminal charges was to be based upon the usual charging standards applied in British Columbia. These standards are that before charges are approved by the Crown:

   a) there must be a substantial likelihood of conviction on the evidence; and

   b) prosecution is warranted in the public interest.

3. The investigation was to be under the supervision of Chief Superintendent John Sebastian, Officer in Charge, Federal Operations, R.C.M.P., Vancouver, British Columbia. All requests by me for assistance were to be directed through Chief Superintendent Sebastian and any legal advice required by the police during their investigation was to come from me.

It is my opinion that the terms of reference were broad enough to allow me complete freedom to make any inquiries I felt were necessary to carry out my assignment responsibly.

INVESTIGATION AND ASSESSMENT

The R.C.M.P. investigation commenced immediately following your press conference on July 12, 1990 and has been conducted in a very thorough and professional manner by Chief Superintendent Sebastian. He was very ably assisted by Inspector Ernie MacAulay, Assistant Officer in Charge, Commercial Crime Section and other experienced police officers. The investigation included the interviewing of approximately 12 witnesses, the reviewing of numerous documents and exhibits including a tape containing 9 separate telephone conversations, the execution of two search warrants and of course the preparation of a complete brief relating to this investigation.

Following your engagement I organized a prosecution team consisting of Bruce Fraser, Q.C., Director of Special Prosecutions and General Counsel, and Greg Lepp, Special Prosecutor, to work with me in assisting the police and assessing this matter.

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The police investigation team and our prosecution team met in Vancouver on July 24, 1990 and in Edmonton on August 21, 1990 and as well have had numerous telephone conversations and exchanged much correspondence and written material.

I am pleased to say that the opinion I express in this report is shared unanimously by all members of the prosecution and police investigation teams.

BACKGROUND

The spark that ignited this investigation occurred on July 11, 1990 when Mr. Moe Sihota, M.L.A. for Esquimalt-Port Renfrew and the justice critic for the Official Opposition in the B.C. Legislature disclosed the transcript of two telephone conversations to the Legislative Assembly and then to members of the press. The two telephone conversations were between the then Attorney General, Bud Smith, Q.C., (herinafter referred to as Mr. Smith) and Bill Stewart, the then Assistant Deputy Minister of Criminal Justice (hereinafter referred to as Mr. Stewart), and between Mr. Smith and Ms. Margot Sinclair, T.V. reporter (hereinafter referred to as Ms. Sinclair).

Immediately following the above disclosure, Mr. Sihota delivered a copy of a tape that contained the two above noted telephone conversations as well as seven (7) other telephone conversations to the Deputy Attorney General of British Columbia. In a letter from Mr. Sihota to Mr. Hughes delivered the same day Mr. Sihota indicates that:

> "Actions of the Attorney General raise questions as to whether the provisions of the Criminal Code relating to obstruction of justice have been violated."

In order for this allegation to be understood it is necessary to provide a brief description of my appreciation of the history of this matter.

Fall 1989 — A cabinet Minister in the current government, Mr. William E. Reid, resigned as Provincial Secretary after a probe by Comptroller-General, Mr. Brian Marson, found Mr. Reid's actions "irregular" and "improper". These actions included a grant of $277,065 from a lottery fund Mr. Reid administered being given to a company owned by Mr. Reid's former campaign manager and another friend.

The R.C.M.P. were asked to investigate this matter.

Late 1989/ Early 1990	*The R.C.M.P. completed their investigation and recommended charges of Breach of Trust and Fraud against Mr. Reid.*
February 1990	*After receiving and reviewing several opinions from lawyers both within the B.C. Attorney General's Department as well as members of the private bar, and after reviewing this matter with the R.C.M.P., the Deputy Attorney General, Mr. Hughes, decides that no criminal charges will be laid in the "Reid" matter. This decision is accepted by the Deputy Commissioner of the R.C.M.P., Mr. D.K. Wilson.*
March 20, 1990	*At a press conference Mr. Sihota and the Leader of the Official Opposition, Mr. Michael Harcourt, discussed the "Reid" matter.* *Mr. Harcourt made the following comment:* *"After reviewing the Criminal Code, the case law and very extensive discussions with prominent lawyers in the Province, it is our belief that there is sufficient evidence to warrant the laying of charges pursuant to Section 122 of the Criminal Code."* *Mr. Sihota made the following comment:* *"On the basis of these facts and the case law which I have outlined, it is my view that there is sufficient evidence here to warrant the laying of charges. However, not content exclusively with my interpretation of it and I have taken the liberty of discussing this matter further, double checking it and triple checking it, with prominent Defence and Crown Counsel in British Columbia. And their view is consistent with mine. Now as a result, it is our view that should the Attorney General arrive at a position that is contrary to our view, it is my intention to attend at a Justice of the Peace, most likely here in Victoria, and swear a private information and trigger the laying of charges in this case.... it is our attention (sic) to put it more directly that if the Attorney General does not proceed with the laying of charges, we will proceed with the laying of charges."*

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__March 26, 1990__	*In a letter from the then Attorney General, Bud Smith, Q.C. to Mr. Michael Harcourt the following is said by Mr. Smith:* *"I observe that it was stated at the press conference that prominent Defence Counsel and Crown Counsel have advised you on this matter. I would invite you to make opinions obtained from these sources available to Mr. Hall. As well, it would be entirely appropriate for you or any of the counsel who have advised you or any of your colleagues to make an appointment with Mr. Hall and to attend upon him to give him whatever information you consider relevant."*
__April 19, 1990__	*Ombudsman, Mr. Stephen Owen, was appointed as a sole Commissioner to conduct a public inquiry into the process and procedure followed by the Ministry of the Attorney General in deciding that Mr. William E. Reid would not be prosecuted with respect to the awarding of a grant under the Growth and Opportunities B.C. Grants Program to the Semiahmoo House Society.*
__May 18, 1990__	*Mr. Sihota laid a private information alleging Breach of Trust against Mr. Reid. After a process hearing, His Worship P. Lim, J.P. issued process on May 28, 1990 with first appearance date for Mr. Reid of June 12, 1990.*
__June 11, 1990__	*The Attorney General announced his decision not to intervene in the "Reid" matter and that the Crown will not take over the prosecution.* *Mr. Sihota announced that Mr. Peter Firestone had been retained to prosecute this private information.*
__June 12, 1990__	*The relevant telephone conversations between Mr. Smith and Mr. Stewart and between Mr. Smith and Ms. Sinclair were intercepted and recorded.*
__June 13, 1990__	*Mr. Firestone wrote to Mr. Hughes and asked for production of all documents in the "Reid" matter such as police reports, exhibits, etc.*

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June 21, 1990 Mr. Hughes did respond to Mr. Firestone's letter of June 13, 1990 by indicating that the documents are secure and that they will be turned over to Mr. Firestone upon him successfully obtaining a subpoena requiring the production of these documents. Mr. Hughes suggested a date for the application of June 25, 1990 and that the Attorney General's Department would appear in support of this application.

June 27, 1990 Mr. Firestone sent a letter to the Court withdrawing the charge against Mr. Reid. (It is formally noted withdrawn on 29 June 1990)

July 11, 1990 The disclosure of the trancript of the conversations as noted in the opening paragraph of this section.

The police investigation disclosed and confirmed all of the above background.

I should make one important comment at this time concerning the background. It is my understanding that there were interceptions of telephone conversations involving Mr. Smith on his car phone from sometime in the early Fall 1989. I have listened to the composite tape that the police received and it contains nine (9) separate telephone conversations. It is my firm belief that there are recorded conversations that neither I nor the police have been able to secure. The interceptor was not prepared to be interviewed by the police unless he received "immunity" from prosecution and I was not prepared to recommend such a step to the B.C. Attorney General. As a result a search warrant was executed on the interceptor's residence without any additional evidence being discovered. The interceptor's counsel has admitted on behalf of his client that he does not have any additional tapes or transcripts of intercepted communications in his possession, but that does not mean he may not have recorded other conversations and turned them over to others.

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ISSUES

The police report has left two (2) issues to resolve:

1. Allegations of attempt obstruct justice by Mr. Smith,

2. Possible criminal charges concerning the interception and disclosure of the telephone conversations.

I have completed my review of Issue #1 and will report in this letter. Issue #2 is still under review and I will report to you in another letter immediately following its completion.

ISSUE #1 ALLEGATIONS OF ATTEMPT OBSTRUCT JUSTICE BY THE FORMER ATTORNEY GENERAL, BUD SMITH, Q.C.

A. EVIDENCE

The entire scope of the evidence relevant to this allegation is contained in two (2) telephone conversations that were intercepted and recorded on June 12, 1990 and contained in a composite tape that the police secured. This composite tape contained nine (9) conversations in total and was seized by the police from Deputy Attorney General, Mr. Hughes, who received it from Mr. Sihota. I understand Mr. Sihota had received this tape from Ms. Debi Pelletier, a reporter with Broadcast News in Victoria who had made this composite tape from a collection of tapes provided by the interceptor.

With the possible exception of one of the other seven (7) telephone conversations on the composite tape the remaining seven (7) conversations are irrelevant for the purpose of discussing this issue. The one possible exception will be discussed later in the evidence.

The two (2) telephone conversations that are relevant to this issue are as follows:

1. An incomplete telephone conversation between Mr. Smith and Mr. Stewart,

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2. A complete telephone conversation between Mr. Smith and Ms. Sinclair.

i) Conversation between Mr. Smith and Mr. Stewart

This conversation was between the then Attorney General, Bud Smith, Q.C. and the then Assistant Deputy Minister of Criminal Justice, Bill Stewart.

The tape of this conversation commences part way through the conversation and carries on for about six (6) minutes before it is terminated properly by the parties. There is an unexplained "gap" in the tape at about the 3 minutes and 30 seconds point. The telephone call was originated by Mr. Smith from his Auto Tel mobile telephone sometime in the morning of June 12, 1990, perhaps while Mr. Smith was on his way to work. The call was received by Mr. Stewart in his office in the Attorney General's Department on a hard line.

The call can be divided chronologically into the following parts: (for ease of reference I have attached a copy of the transcript of this call as Appendix "I" and divided the call in the same way as the assessment.)

a) queries and critical comments about Mr. Firestone.

b) comments about Mr. Firestone's alleged ambition.

c) questions about Mr. Sihota appearing as a witness on an abuse of process hearing.

d) more discussion about Mr. Firestone.

e) the unexplained "gap".

f) discussion about media coverage of an event the previous evening that Mr. Smith was involved in.

g) end of conversation.

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ii) Conversation between Mr. Smith and Ms. Sinclair

This conversation was between the then Attorney General, Bud Smith, Q.C. and T.V. Reporter, Margot Sinclair.

This taped conversation appears to be complete with proper introductions and terminations. It lasts for approximately 1 minute and 45 seconds and was originated by Mr. Smith from his Auto Tel mobile telephone and received by Ms. Sinclair on a hard line.

This call can be divided into the following parts (copy of transcript of this call attached as Appendix "II")

a) critical comments about Mr. Firestone.

b) comments about Mr. Firestone's alleged ambition.

iii) Other Possible Relevant Conversation

The one other telephone conversation that will be considered was one that originated with Mr. Smith calling his wife, Daphne Smith, on his mobile telephone in about September 1989. During this call Mr. Smith and Mrs. Smith discuss the "Reid" matter and the fact that Mr. Smith characterizes the "Reid" matter as "dumb" but not "unlawful".

B. LAW ON ATTEMPT TO OBSTRUCT JUSTICE

Attempt to Obstruct Justice is covered by Section 139 of the Criminal Code of Canada. The relevant portion of this Section is s. 139(2) which is as follows:

> s. 139(2)
>
> Every one who wilfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Subsection (1) deals with the indemnification of or the acceptance of indemnification by a surety and has no application to the facts in this case.

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Subsection (3) deals with the interference, or tampering, with witnesses or jurors and the acceptance by witnesses or jurors of, or the attempt to obtain a bribe and again has no application to these facts.

Subsection (2) is the general offence of obstruction, however it is left undefined. In R. v. Spezzano (1977) 34 C.C.C. (2d) 87 (Ont. C.A.), Martin J.A. held that s. (now 139(2)) creates a separate offence of wilfully attempting to obstruct, pervert or defeat the course of justice and is not limited by the language of subsections (1) and (3).

Subsection (2) provides that any and all wilful attempts to obstruct, pervert or defeat the course of justice not described in subsection (1) are indictable offences. In spite of its wording, Section 139(2) does create a substantive offence. Martin J.A. in R. v. May (1984) 13 C.C.C. (3d) 257 at 260 (Leave to Appeal to the Supreme Court of Canada refused) held:

> *"Although the offence created by (now s.139(2)) of the Code is framed in the language of an attempt we think that (now s.139) in fact creates a substantive offence, the gist of which is the doing of an act which has a tendency to pervert or obstruct the course of justice and which is done for that purpose: see Smith and Hogan, Criminal Law, 5th ed., p.700."*

There are three elements of Section 139(2) left undefined and they are as follows:

1. *in any manner*
2. *obstruct, pervert or defeat*
3. *the course of justice*

The words "obstruct, pervert or defeat" must be given their literal meaning and one should have no difficulty in applying their meaning to a given set of facts and if necessary reference can be made to a dictionary definition. It will be necessary to refer to the existing case law to determine the meaning of the other two elements.

I will first deal with the meaning of the expression "course of justice" as it is by far the easiest in relation to this matter. In R. v. Spezzano (1977) 34 C.C.C. (2d) 87 at p.91, Martin J.A. stated:

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> *"The expression 'the course of justice' in (now s.139(2)) includes judicial proceedings existing or proposed but is not limited to such proceedings. The offence under (now s.139(2)) also includes attempts by a person to obstruct, pervert, or defeat a prosecution which he contemplates may take place, notwithstanding that no decision to prosecute has been made."*

In this case, based on the fact there was a police investigation in the "Reid" matter and the opinions given on the police recommendation as to charges, it is clear there is a contemplation of a prosecution. In addition, since a private prosecution has been commenced and a decision made not to intervene and stay that private prosecution it is clear a judicial proceeding also exists. Therefore, there is no issue as to the element of whether or not it is within the "course of justice".

The more difficult issue is the meaning of the words "attempts in any manner". The wording is very broad, however, some recent cases assist in determining its meaning. In R. v. Graham (1985) 20 C.C.C. (3d) 210 (Ont. C.A.) the accused was charged with attempting to obstruct the course of justice by attempting to dissuade a person by threats from giving evidence. The accused, in custody awaiting trial on numerous offences including a charge of unlawfully breaking and entering an apartment and committing an assault, wrote a letter to his brother in which he asked his brother to threaten or intimidate witnesses from testifying. These witnesses had given evidence against the accused at a preliminary inquiry. The letter was intercepted by a correctional officer at the gaol, in accordance with the usual censorship procedure. The accused was acquitted of the charge of attempting to obstruct justice but the Crown appealed. The Ontario Court of Appeal ordered a new trial. The trial judge had acquitted on the grounds that the count which charged "did wilfully attempt to obstruct the course of justice by attempting to dissuade a witness by threats from giving evidence" was not an offence in law. As the letter had never been delivered there was no evidence upon which the jury could properly convict the accused. The issue before the Court of Appeal was whether the writing of the letter and the dispatching of it to the brother to enlist the brother's assistance in intimidating witnesses from giving evidence constituted an offence. In considering the constituent elements of the offence charged, the Court of Appeal referred to the quote of Martin J.A. in R. v. May previously set out in which he said the gist of the offence is the doing of an act which has a tendency to pervert or obstruct justice. The Court

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of Appeal held that in considering the test to be applied in determining whether an act has a tendency to pervert or obstruct the course of justice the dicta of Lord Lane, C.J. of the English Court of Appeal in R. v. Murray [1982] 2 All E.R. 225 was of assistance. At p.228 Lord Lane, C.J. stated:

> "So what the learned judge in the present case had to decide was whether there was evidence which was fit to go before the jury, that first of all this man had the intention to pervert the course of justice (which he plainly did), but, much more importantly, whether there was evidence that what he did had a tendency to have that effect. In the view of this court, there must be evidence that the man has done enough for there to be a risk, without further action by him, that injustice will result. In other words, there must be a possibility that what he has done 'without more' might lead to injustice. It seems to us that he does not himself have to introduce the evidence into the process of justice, as counsel for the appellant invites us to rule. It is sufficient that what he has done 'without more' has a tendency to produce that result.
>
> To establish a tendency or possibility you do not have to prove that the tendency or possibility in fact materialized."
> (Note: underlining added my me)

Chief Justice Howland, speaking for the Court in R. v. Graham, supra, stated at p.213:

> "In our opinion, the trial judge also erred in concluding there was no evidence upon which the jury could convict the respondent. Section (now 139(2)) is broad in its wording as it includes a wilful attempt 'in any manner... to obstruct, pervert or defeat the course of justice'. Here the conduct of the respondent went beyond an intention to ask his brother to intimidate Hake or even an expression of that intention to another inmate. It was embodied in a letter which he had written to his brother and which he had delivered to the prison authorities for mailing. We consider that

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> the evidence as to the acts of the respondent in writing this letter and in attempting to dispatch it should have been left to the jury. It was evidence on the basis of which the jury could properly have concluded that the respondent's acts had a tendency to pervert or obstruct the course of justice."

The accused Graham appealed to the Supreme Court of Canada from the judgment of the Ontario Court of Appeal which set aside the acquittal and ordered a new trial. The appeal to the Supreme Court of Canada may be found in R. v. Graham [1988] 1 S.C.R. 214. The judgment of the Court delivered orally by Estey, J. was:

> "We are all of the view that there is no error in the disposition of this appeal by the Court of Appeal for Ontario. Accordingly the appeal is dismissed."

In 1989 the Chief Justice of the Newfoundland Court of Appeal appears to have gone further. In R. v. Hearn and Fahey (1989) 48 C.C.C. (3d) 376 (Nfld.C.A.) the court heard a Crown appeal from the acquittal of the accused on a charge of attempting to obstruct justice. The facts were that Fahey was found by a police officer, in a position normally occupied by a driver, in a motor vehicle which was broken down. Fahey was in an apparent intoxicated condition. In response to a demand for breath samples, Fahey refused stating he had not been driving the motor vehicle. He was then charged with refusing to comply with the demand. Prior to the trial, the accused and his lawyer Hearn attempted to persuade one Griffin to testify that he, Griffin, had been driving the car that evening and that he had abandoned the car after it had broken down leaving Fahey in it with another companion. At his trial on the refusing charge, Fahey testified that he had been driving his car but that they did not start drinking until after the car had broken down. During the trial Griffin presented himself to the police and told them what he had been asked to do by Fahey and Hearn. Griffin did not testify at Fahey's trial. Fahey was convicted of refusing the demand. Fahey and Hearn were then charged with unlawfully attempting to obstruct the course of justice in a judicial proceeding by counselling Griffin to give false testimony to the effect that Griffin was operating the car at the material time.

Fahey and Hearn, at their trial before a judge alone, applied for a directed verdict on the basis that the evidence of Griffin, if it had been given, would not have affected the result of the earlier trial

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against Fahey. They contended that the issue before the trial judge was whether or not the peace officer had reasonable and probable grounds for believing that Fahey had committed an offence of care and control and if he had such reasonable and probable grounds then he was entitled to demand samples of Fahey's breath and Fahey could not, without reasonable excuse, refuse to comply with that demand. They further contended that the question of who was driving the car earlier in the evening was not relevant to that issue. Their submission was that Griffin's testimony could not have affected the outcome of the trial and that if, in fact, Griffin had testified justice would not have been obstructed. The trial judge decided that:

> "The real issue here is whether the counselling, as alleged by Griffin - the counselling by the accused, Fahey, if that counselling had been brought to its intended conclusion, would have likely resulted in an obstruction of justice."

On appeal, the Crown conceded, though it was a concession on a point of law and not binding on the court, that the evidence of Griffin would not have affected the outcome of the breathalyzer trial. Goodridge C.J.N. at 379 stated the issue to be as follows:

> "That issue is whether a person may be guilty of the offence of wilfully attempting to obstruct the course of justice by counselling another to testify falsely at a trial when the false testimony proposed could not as a matter of law affect the outcome of that trial."

His Lordship then discussed the description of the offence which appears in a number of English and Canadian authorities, including R. v. Murray, R. v. May, and R. v. Graham and concluded these authorities hold that the behaviour complained of had a tendency to pervert the course of justice. However, he also concluded that none of the cases cited dealt directly with the issue that was before them. None had confronted the question of whether an attempt to obstruct justice in a manner which could not achieve its intended purpose is an offence under s.139(2). He further stated that in Canada the offence is a statutory one while its English counterpart is a common law offence and that it is not open to a court to add the words to the statutory language in which the offence is described or to abridge its application. He then stated at p. 381:

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> *"The graveman of the offence under (now s.139) is the wilful attempt to obstruct justice . It does not matter that the attempt is unsuccessful or, even, that it does not have the potential for success. When there is a wilful attempt, however misguided, to influence the outcome of a trial improperly the offence is complete.*
>
> *The respondents may of course have a valid defence. It may, for example, be their position that the attempt was not made or that what was done was for a purpose other than to obstruct justice.*
>
> *What the trial judge asked himself was whether the alleged counselling if brought to its intended conclusion would have resulted in the obstruction of justice. If one infers from the evidence (as one may) that the intended conclusion was the obstruction of justice, the question put to himself is perhaps correct. The question he answered, however, was whether the alleged counselling had a tendency to obstruct justice. If one equates 'tendency' with 'potential' or 'capability', that is not a pertinent question under s. (now 139) of the Criminal Code. On a charge of wilfully attempting to obstruct justice by counselling false testimony in a pending trial, if the evidence reveals a guilty mind and a wilful act designed to fulfill the intention of the guilty mind, it matters not that the intention could not be satisfied by the act undertaken."*
> *(Note: underlining added by me)*

The acquittal was then set aside and a new trial was ordered.

In a separate judgment, Morgan J.A. seems to have come to the opposite conclusion regarding whether or not the act complained of must have a tendency to pervert the course of justice. He stated the general offence of obstruction enacted by subsection (2) is left undefined. His Lordship held that the essence of the offence is as stated in the treatise on Criminal Law, Second Edition, by Mewett and Manning, p.491:

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> *"For there to be a conviction under s. (now 139(2)) it is not necessary that the course of justice have been actually impeded by the accused; the offence is complete once the accused has wilfully attempted to so impede. It follows that, in the absence of actual interference, the course of action in respect of which the accused is charged must at least have a potentiality to obstruct, pervert or defeat the course of justice were it possible to carry it through to its conclusion. For in the absence of any such potential given it were possible for the accused to complete his intended course of action, (i.e. legal responsibility), then to punish the accused would be to punish him for a mere intent to obstruct."*

His Lordship then cited a Court of Appeal of England case R. v. Machin [1980] 3 All E.R. 151 in which it was held in part that to do an act with the intention of perverting the course of justice is not of itself enough but the act must also have that tendency. His Lordship further cited R. v. May, supra, and the quote from Martin J.A. at p. 60 which is to the same effect.

The matter was appealed to the Supreme Court of Canada. The appeal was dismissed on the 8th of December, 1989. The citation is R. v. Hearn and Fahey (1990) 53 C.C.C. (3d) 352. Madam Justice Wilson delivered the following brief judgment:

> *"We are all of the view that this appeal which comes to us as of right must be dismissed for the reasons given by the Cheif (sic) Justice of Newfoundland."*

It may therefore be argued that it is not incumbent upon the Crown to prove that the behaviour complained of must have a tendency to pervert the course of justice.

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C. *APPLICATION OF LAW TO THE EVIDENCE*

If one accepts the law as enunciated by the Newfoundland Court of Appeal it would appear that one must examine the telephone conversations from the point of view of the intention of the parties as opposed to the potential result. In other words the easiest burden for the Crown is gleaned from the Newfoundland Court of Appeal judgment in that it does not matter whether there was a tendency to pervert the course of justice, but rather look only at the intention of the parties.

I might add that although I am not convinced that the law of Newfoundland Court of Appeal in R. v. Hearn and Fahey, supra, will prevail in future, as this is the most severe test for potential accused and the easiest burden for the Crown I have used this as the basis of my analysis. If the evidence fails to meet this standard there is no need to proceed further as a less severe test for a potential accused would require proof by the Crown of evidence of a "tendency" to pervert the course of justice as well as the "intention" to do the same.

In order to discern the intention of the parties to the conversations it is necessary to dissect the two relevant conversations between Messrs. Smith and Stewart and between Mr. Smith and Ms. Sinclair.

i) *Conversation between Messrs. Smith and Stewart*

In the Messrs. Smith and Stewart conversation as noted on page 8 the relevant parts are parts a, b, c and d.

In view of the fact that this conversation is incomplete, the intercepting apparently commencing part way through the telephone call, it is necessary to attempt to reconstruct the context from the "atmosphere" at that time.

On June 11, 1990, one day before this conversation Mr. Smith had announced that his Department would not be intervening in the prosecution of Mr. Reid that had been commenced by Mr. Sihota. This prompted Mr. Sihota to announce that Mr. Firestone had been retained to prosecute Mr. Reid.

There had been considerable speculation within the legal community of B.C. and within the Attorney General's Department as to:

a) *who Messrs. Harcourt and Sihota had been referring to in their press conference of March 20, 1990 as "prominent Defence and Crown Counsel in B.C." that had reviewed the "Reid" matter and agreed that charges were warranted.*

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b) who would be retained by Mr. Sihota to prosecute Mr. Reid if the Attorney General chose not to intervene.

In part "a" of the conversation between Messrs. Smith and Stewart, Mr. Stewart appears to be responding to queries by Mr. Smith as to the background of Mr. Firestone. The following comment occurs:

Smith "He says you guys used to use him and he's a friend of uh Murray's."

Apparently Mr. Smith had heard information about Mr. Firestone that he wanted confirmed. In answer Mr. Stewart says:

Stewart "He is, but Murray fired him off a case because he wasn't any good, that was a, uh, that Frisbee case, that was that murder on a cruise ship."

Smith "Yeah."

Stewart "And he couldn't handle the pressure, didn't do any work and so uh, Dennis fired him and uh, put Ernie on the case and uh the guy almost had a nervous breakdown."

It would appear that Mr. Smith now is made aware of another side of one of the prominent persons referred to in the earlier press conference of March 20, 1990 of Messrs. Sihota and Harcourt, in Mr. Smith's letter to Mr. Harcourt of March 26, 1990, and in gossip around the legal circles.

Mr. Smith then makes the following comments:

Smith "How can we get that out?"

Stewart "(Laughter, etc.)

Smith "We could do anything we want now."

The critical question is "what was Mr. Smith's intention?" when he made those remarks.

It is my opinion that the comment "How can we get that out?" must be read in the context in which it was made and shows nothing more than an intention on the part of Mr. Smith to set the public record straight on the experience and abilities of Mr. Firestone. The most reasonable inference one can draw is that it is Mr. Smith's intention to deal with an issue between two political parties as opposed to interfering with the course of justice.

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The comment "We could do anything we want now" is less clear and remains unexplained. However, it is my opinion that it seems to relate to the earlier comments on Mr. Firestone's experience and abilities and as such since his character was put in issue by positive comments it is, in his mind, fair game to point out the negative aspects also. This would again not manifest itself as an intention to interfere with the "course of justice".

In part "b" of this conversation Mr. Stewart advises Mr. Smith of Mr. Firestone's alleged ambition. Mr. Smith seems very interested. Apparently another call was placed by Mr. Smith to Mr. Stewart later that morning of June 12, 1990 to get Mr. Stewart to confirm this information. This call was not intercepted and the details of this call are vague. These comments do not show any evidence of an intention on the part of Mr. Smith or indeed Mr. Stewart to commit a criminal act.

In part "c" there is a general discussion concerning the potential of Mr. Sihota being a witness on an "abuse of process" application. Mr. Smith expresses an interest in seeing Mr. Sihota cross-examined on comments made at his "original press conference" and in the "Times Colonist" of June 12, 1990. In addition, there is some suggestion that a similar discussion may have occurred on other occasions when Mr. Smith, in reference to an application for abuse of process, suggested that Defence Counsel should be made aware of public pronouncements made by Mr. Sihota.

These comments definitely show an interest by Mr. Smith in the Reid proceedings as opposed to the earlier comments that relate to the proposed prosecutor. However, Mr. Smith's declared intention is to ensure that "public statements" by Mr. Sihota are brought to the Court's attention. It is my opinion this is not an "attempt to obstruct, pervert or defeat the course of justice."

Whether an Attorney General should involve himself in this fashion in a specific prosecution is not the subject of this review, but from the point of view of the criminal law there is no evident intention to "obstruct, pervert or defeat the course of justice" by encouraging the bringing of "evidence" of public statements to the attention of the court.

Part "d" of the conversation is a further discussion of Mr. Firestone's experience and abilities and as with part "a" does not show any evidence of an intention on the part of Mr. Smith or Mr. Stewart to commit a criminal act.

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The balance of the tape is basically irrelevant to this assessment.

ii) Conversation between Mr. Smith and Ms. Sinclair

The second telephone conversation that is of interest is between Mr. Smith and Ms. Sinclair and appears to follow shortly after the telephone conversation between Messrs. Smith and Stewart.

This telephone conversation appears to be complete and was dissected in two parts as noted on page 9.

In part "a" Mr. Smith is advising Ms. Sinclair of what he has just learned about the experience and abilities of Mr. Firestone. Ms. Sinclair appears mildly interested.

In part "b" Mr. Smith advises Ms. Sinclair of Mr. Firestone's alleged ambition and this seems to raise some interest on the part of Ms. Sinclair.

The clear intention on the part of Mr. Smith in calling his source in the media must have been to encourage the public dissemination of both parts of this conversation. In fact Mr. Smith says:

> *Smith "So, if some one could get onto that, they've got the story of the year."*

It is my opinion this is consistent with Mr. Smith's earlier comment to Mr. Stewart when he said:

> *Smith "How can we get that out?"*

Mr. Smith appears to be attempting to disseminate the information earlier obtained from Mr. Stewart in relation to Mr. Firestone's experience and abilities. Once again, it is clear, in my view, that Mr. Smith's intention is to counter earlier public statements made by Messrs. Sihota and Harcourt about prominent Defence and Crown Counsel in the Province of British Columbia. There is no evidence that Mr. Smith intends to engage in any activity one would ordinarily associate with an attempt to obstruct justice.

In summary, it is my opinion that the evidence from these telephone conversations between Messrs. Smith and Stewart and between Mr. Smith and Ms. Sinclair provide no foundation for a charge that Mr. Smith or anyone else intended to "obstruct, pervert or defeat the course of justice."

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As I indicated earlier I am not convinced that the law in the Newfoundland Court of Appeal decision in R. v. Hearn and Fahey, supra, will prevail. If the law were not accepted and if the Crown had to prove a "tendency" to pervert the course of justice as well as an "intention" it is my opinion that the available evidence in this matter would fail on both grounds. It is questionable as to whether:

a) comments on the experience and abilities of a prosecutor at this early stage in the process, or

b) the attempt to make Defence Counsel aware of public pronouncements by the informant,

indicate a tendency to "obstruct, pervert or defeat the course of justice."

iii) Conversation between Mr. and Mrs. Smith

In the course of discussing the evidence above I referred to one other telephone conversation that should be considered and it was between Mr. and Mrs. Smith in about September 1989.

During that telephone conversation Mr. Smith made some remarks about Mr. Reid's activities and indicated that they were "dumb" but not "unlawful". One of the people interviewed by the police suggested that this was evidence that Mr. Smith had made up his mind about the potential criminal charges against Mr. Reid and therefore precluded a proper assessment. I have two comments:

1. *It is accepted by all members of the investigation and prosecution teams that the decision not to prosecute in the "Reid" matter was made by the Deputy Attorney General, Mr. Ted Hughes, Q.C., without involvement of the Attorney General.*

2. *One would expect that Mr. Smith is entitled to make comments with his wife as to what his personal views are provided they do not affect the process.*

This again does not provide any evidence of an intention to obstruct justice.

At this point I should comment on the fact that this opinion was reached in the absence of any consideration as to the admissibility of any of the evidence. I have assumed that all of the evidence is

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admissible including the "intercepted and recorded" conversations. In my report on "Issue #2" I will be dealing with the "intercepted and recorded" conversations in terms of this interception being "lawful or unlawful."

D. CONCLUSION

It is my respectful opinion that after a careful review of the available evidence, particularly the two (2) relevant telephone conversations between Messrs. Smith and Stewart and between Mr. Smith and Ms. Sinclair and all the surrounding circumstances of these conversations, and after applying the law as I understand it, to this evidence, there are no grounds for proceeding with charges of attempt to obstruct justice against Mr. Smith or anyone else.

In order to ensure that all other avenues were canvassed I examined other sections of the Criminal Code to see if there were any applicable sections. The only section that had any relevance to this evidence was Section 122, Breach of Trust. My review of the law and its application to the evidence led me to believe that it was also inapplicable. In this instance there is no suggestion that Mr. Smith used the office of the Attorney General in any way to accomplish anything. If he had intended to use his office in some fashion he could have intervened to "stay" the proceedings which he chose not to do.

ISSUE #2 POSSIBLE CRIMINAL CHARGES CONCERNING THE INTERCEPTION OF COMMUNICATIONS

The report on this issue will be contained in another letter on which I am currently working.

RECOMMENDATION

It is my opinion, which is shared unanimously by all members of the investigation and prosecution teams, that there is no evidence in the Report to Crown Counsel to support charges of attempt to obstruct justice against Mr. Smith or any other person.

I would like to express my appreciation to Chief Superintendent John Sebastian and Inspector Ernie MacAulay for there cooperation and assistance in addressing this matter. They showed considerable patience in responding to my many requests for more interviews and documents and always approached this task in a full spirit of cooperation.

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I would also like to indicate to you that this assessment and opinion would not have been possible without the capable assistance of two extremely competent Crown Prosecutors, Bruce Fraser, Q.C. and Greg Lepp. They toiled endlessly with me in dissecting, analyzing and postulating on the law and the evidence. It was a pleasure to work with them.

Thank you for your cooperation and for providing me with an opportunity to work on this most interesting assignment.

Yours sincerely,

Neil McCrank

Neil McCrank
Deputy Attorney General

NMc/lan
Attachments

C.C. Chief Superintendent John Sebastian

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DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 78
DATE: Aug 27/90
HRA

PRIVATE AND CONFIDENTIAL

August 23, 1990

Mr. E.N. (Ted) Hughes, Q.C.
Deputy Attorney General
5th Floor 910 Government Street
Victoria, British Columbia
V8V 1X4

Dear Mr. Hughes:

Recommended Prosecutions
Interception of Communications

As I promised in my letter to you dated August 22, 1990 I am providing the following opinion respecting possible charges concerning the interception of communications in this case.

ISSUE #2 *POSSIBLE CRIMINAL CHARGES CONCERNING THE INTERCEPTION AND DISCLOSURE OF THE TELEPHONE CONVERSATIONS*

A. BACKGROUND AND EVIDENCE

The following facts additional to those contained in my earlier letter, are salient in relation to the interception issue:

1. *On June 12, 1990, Mr. Bud Smith, the British Columbia Attorney General at the time, placed a call between 9:00 and 10:00 in the morning to Mr. Bill Stewart, the Assistant Deputy Minister - Criminal Justice using an "Auto Tel" radio car telephone.*
2. *Mr. Stewart received the call using a regular hard line telephone in his office.*
3. *Later in the day Mr. Smith placed another call using the same apparatus to Ms. Margot Sinclair, a reporter with CKVU television in Victoria.*

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4. Aside from these two calls, four other calls were place at various times by Mr. Smith to Ms. Sinclair and thre calls were placed by Mr. Smith to Ms. Daphne Smith, hi wife, in Kamloops. These additional seven calls were al placed using the "Auto Tel" radio car telephone.

5. Calls placed using an "Auto Tel" can be intercepted easil using a relatively inexpensive scanner available at man electronic stores.

6. According to the statement given by Mr. Smith to th police, Mr. Smith thought he was talking on a cellula telephone, not a radio telephone. Mr. Smith also said h felt the telephone in his automobile provided the same degree of privacy as an office telephone.

7. In one of the conversations with Ms. Sinclair, Mr. Smith indicated "this could be recorded". In one of the calls to his wife, Mr. Smith indicated "I'm a little hesitant to talk about it over a radio telephone". In his statement to the police Mr. Smith called these comments "patterns of speech".

8. Mr. Stewart told the R.C.M.P. that he thought Mr. Smith was calling from an office and therefore was of the view that the conversation was entirely private.

9. It is obvious from the contents of Ms. Sinclair's conversations with Mr. Smith that she was well aware Mr. Smith was using a mobile automobile telephone.

10. Ms. Sinclair, in her statement to the police, indicated she believed that her conversations with Mr. Smith were private.

11. Ms. Smith was not directly interviewed but obviously knew, from the contents of the tape recordings, that Mr. Smith was calling her using an automobile telephone.

12. Ms. Smith indicated to the police, through her lawyer, that she thought her conversations with Mr. Smith were private.

13. All of the calls referred to above were in fact intercepted using a scanner by Mr. Brian Graves, a part-time journalist.

14. Mr. Graves contacted Ms. Debi Pelletier, a reporter with Canadian Press, and allowed Ms. Pelletier to make a composite tape from the various master tapes in the possession of Mr. Graves.

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15. Ms. Pelletier contacted Mr. Moe Sihota, the Official Opposition Justice critic, to see if she had a story based on the contents of the tape. This contact occurred approximately June 15, 1990.

16. Ms. Pelletier wrote a story relating to the contents of the intercepted calls but received a legal opinion from lawyers working for Canadian Press on or about July 9, 1990 that the disclosure of the contents of the conversations would be illegal.

17. Ms. Pelletier provided the composite tape to Mr. Sihota.

18. Mr. Sihota received legal advice from a lawyer by the name of Mr. Barry Long. According to the statement Mr. Sihota gave to the police, Mr. Long's legal opinion was that the conversations taped did not contain private communications. In large measure this is correct. Mr. Long is clearly of the opinion that Mr. Smith had no reasonable expectation of privacy. However, the last paragraph of the opinion urges the reader to examine the subjective and objective expectations of privacy of both parties to the conversation.

19. On July 11, 1990 Mr. Sihota disclosed to the Legislative Assembly the tape recordings and the transcripts thereof relating to the calls placed to Mr. Stewart and Ms. Sinclair on June 12, 1990.

20. Later the same day Mr. Sihota released the same information to the press at a news conference.

21. Directly following this Mr. Sihota released to the Deputy Attorney General the composite tape containing all of the conversations received from Ms. Pelletier and a transcript thereof.

22. On July 13, 1990 or thereabouts, Mr. Graves released another set of tapes containing intercepted conversations to the press gallery by leaving them in a reporter's convertible and advising Ms. Pelletier that they were there.

B. THE LAW ON "PRIVATE COMMUNICATION"

Charges contrary to Part VI are indicated only if private communications were made and intercepted. "Private communication" is defined in Part VI as meaning:

> "... any oral communication or any telecommunication made under circumstances in which it is reasonable for the originator thereof to expect that it will not be intercepted by a person other than the person intended by the originator thereof to receive it...."

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1. "Originator"

In order to determine whether a conversation contains private communications it is first necessary to determine who is the originator of those communications. In Goldman v The Queen [1980] 1 SCR 976 Mr. Justice MacIntyre had this to say regarding this issue at page 995:

> "... the difference between the word conversation and the word communication is, in the context of this statutory scheme, significant. A communication involves the passing of thoughts, ideas, words or information from one person to another. Conversation is a broader term and it would include, as all conversations do, an interchange of a series of separate communications. It is consistent with the scheme of Part IV.1 [now part VI], in my view, to consider the originator of a private communication within the meaning of section 178.1 [now section 183] as the person who makes the remark or series of remarks which the Crown seeks to adduce in evidence."

In the instant case the originators of communications are Mr. Smith, Mr. Stewart, Ms. Sinclair and Ms. Smith. Their respective expectations of privacy must be considered in order to determine whether any of the communications were private.

2. The Tests

Recently, the Alberta Court of Appeal in Regina v. Lubovac (1989), 101 AR 119 and the Quebec Court of Sessions of the Peace in The Queen v. Nin et al (1985), 34 CCC (3d) 89 have accepted a two pronged "subjective - objective" test postulated by David Watt in his textbook Electronic Surveillance. At page 27, Watt has the following to say about the definition of private communication:

> "... it may be helpful to undertake a two step inquiry to ascertain whether any given conversation falls within the protected statutory definition. Initially, the originator of the subject communication must demonstrate an expectation that his communication will not be the subject of interception

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> *by any person other than the person intended by him to receive it. In the event that this wholly subjective expectation of communicational privacy is found to be wanting, the inquiry terminates, the subject communication falls outside the ambit of Part IV.1, [now Part VI] and is not subject to its regulatory and prohibitory scheme. If, on the other hand, the originator of the subject communication manifests such an expectation of privacy, the second step of the inquiry requires a consideration of whether the circumstances of the communication, on reasonable grounds, justify the subjective expectation of the originator. It is only in the event that the attendant circumstances, objectively viewed, justify the originator's subjective expectation, intention or desire that the subject communication is a private communication ...".*

An excerpt exists at page 28 of the same text which was quoted with approval by the courts in Lubovac and Nin:

> *"Equally, in relation to the subjective expectation of privacy, a communicant who chooses a method of communication which exposes his statements to uninvited ears can scarcely assert a reasonable expectation of privacy in response to his implicit invitation to listen. Absent circumstances negating the subjective expectation of privacy of the originator of the statements, the inquiry then shifts to the reasonableness of the expectation of privacy, a matter of inference in light of all the relevant facts and circumstances. Relevant considerations include the location, content and purpose of the communication, the means by which it is transmitted, and the nature of the means, or techniques, if any, employed by the originator to prevent being overheard."*

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In my opinion the Courts in Lubovac and Nin, by accepting the Watt test, have added a subjective gloss to the Code's otherwise objective definition of a "private communication". This only makes sense. One can envision a case where the objective test would point to an expectation of privacy but the originator is subjectively aware that his conversation may well be intercepted. It would not be logical, in such a situation, to find that the communication was a private one.

a) Subjective Test

There is no magic in the formulation of the subjective test, in my opinion. One must simply examine all of the evidence in order to determine whether the originator truly believed his communication would not be intercepted. If this question is answered in the affirmative the objective test is then applied.

b) Objective Test

The precise formulation of the objective test is less than clear from an examination of the cases. In my opinion, there are two possible formulations:

i) Broad Test

It is arguable that Parliament intended the Court to determine whether the circumstances of the case, viewed from an omniscient standpoint, would lead a reasonable man to expect that his communication would be free from interception. As we all know, all communications have some potential for being intercepted. The broad test would ask whether, in light of all of the circumstances, including those unknown to, and unobservable by, the originator, the probability of interception is high enough to cause a reasonable man to expect that the communication would not be private. It is helpful to consider an example. If the broad test is applied to Mr. Stewart's communications to Mr. Smith the fact that Mr. Stewart is using a hard wire telephone in his office is irrelevant. From an omniscient standpoint the communication is one broadcast over a radio frequency which is easy to intercept. One would simply have to ask whether a reasonable man, given those circumstances, would expect the communication to be free from interception.

The advantage of the broad test is that it lends certainty to a determination as to whether a communication is or is not private. If an application of the broad test determines that radio telephone communications are not private, then all such communications fit in that category regardless of the particular circumstances which may surround the originator of a communication over such equipment.

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The problem with the broad test is that even a reasonable originator could not be sure that a communication he believes is private would be protected by the legislation since circumstances unknown to him could make the communication public and subject to lawful interception without an authorization.

ii) Narrow Test

The narrow test would ask whether a reasonable man, in the shoes of the originator, seeing and experiencing only what the originator does, would expect his communication to be free from interception. The difference between the narrow test and the broad test is that the narrow test eliminates from the inquiry those circumstances unknown to the originator.

The advantage of the narrow test is that a reasonable originator would not have to worry that some circumstance unknown to him could turn what he believes to be a private communication into a public one.

The disadvantage of the narrow test is that it would be very difficult for third parties to predict which communications are public and which ones are private. Without knowing the peculiar circumstances surrounding the originator of a communication, the police would be unable to determine whether or not an authorization to intercept a communication is required.

(iii) Canadian Authorities

The accused in Regina v Pitts (1975), 29 CCC 2nd 150 (Ontario County Court) was charged with possession of a device primarily useful for intercepting private communications. He was found with a police scanner. The Trial Judge found as a fact that the police knew their calls were being intercepted. After making this determination the Court found that it was not reasonable for the dispatcher to believe that calls to police were private. This case was decided before the acceptance by the Courts of David Watt's two pronged test. In my opinion, if the case were decided today the same result would have been reached on an application of the subjective test. The police, knowing their calls were being intercepted, could not demonstrate a subjective expectation that their calls were private. Because of the trial judge's finding of fact in this case, it does not assist us in a determination as to how the objective prong of Watt's test is to be applied.

In Regina v Zoell (unreported Saskatchewan Court of Appeal - April 4, 1977) the accused was also charged with possession of a scanner. Once again, the evidence established that the police knew many people other than police officers monitored and heard communications broadcast on the police frequency. A police officer also testified that the police used a secret code if they wanted to avoid interception and

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preserve confidentiality. Chief Justice Culliton found that the police could not reasonably expect their communications would not be intercepted since "to hold otherwise would be to ignore the fact well known to the police, that there are many radios capable of intercepting police communication and many persons do intercept such communications." (page 5). Once again, this case is determined on Watt's subjective prong and does not assist us in a determination as to how the objective test is to be applied.

In Regina v Comeau (1984), 11 CCC 3rd 61 (NBCA) the accused was also charged with illegal possession of a scanner. Once again it was conceded at trial that the police were aware their radio broadcasts were being intercepted. The Court quoted with approval from the Pitts and Zoell cases before deciding that the communications were not private. Once again, the case must be confined to its own facts since the police were subjectively aware that their radio broadcasts were being intercepted and used a code to conceal their most sensitive communications.

Regina v Lubovac (1989), 101 A.R. 119 (Alberta Court of Appeal) concerns the use of a telephone pager. The Crown was attempting to have introduced into evidence details of communications using the pager system between two suspected drug traffickers. The trial court heard evidence that a person wishing to leave a message on another's pager telephones a particular number and leaves a short message with a recording device at the other end of the line. This recording device then broadcasts the message to the pager in the possession of the intended receiver of the communication. Ordinarily, the messages are relayed to a small speaker on the receiver's pager and can to heard by those in the immediate vicinity. The Court in Lubovac made a point of saying that, because of the operation of the system, it is obvious to a person phoning a pager that that system and not a regular telephone system is being used. In light of the evidence as to how the paging system operated, the Court found that an originator could not reasonably expect privacy. The Alberta Court of Appeal, as indicated above, quoted with approval from David Watt's text book and accepted the two pronged test. The case was decided on an application of the objective test. Unfortunately the Lubovac case does not assist us in determining which of the two proposed formulations of the objective test is to be applied. This is because there is no evidence in Lubovac that the originator was unaware of a relevant circumstance with respect to the operation of the pager system. Therefore, in the particular facts of this case, the broad test and narrow test are the same.

Regina v Nin (1985), 34 CCC (3d) 89 (Quebec Court of Sessions) also concerned the use of a pager. The Court found as a fact that the originator knew he was using a pager system and was also aware that ordinarily a pager broadcasts the message for those in the immediately vicinity to hear. The Court, once again, adopted Watt's two pronged test and used the objective one. As was the case in Lubovac, the

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application of the broad and narrow test would obtain the same result since the evidence did not show that the originator was unaware of a relevant circumstance relating to the operation of the pager system. However, the case does, in my opinion, provide some guidance as to which of the two proposed formulations should be used. At page 93 of the decision Sirois, J. compared a pager to a telephone with a speaker attached and said the following:

> *"use of the telephone, owing to the very characteristics of the device, leads its user to presume that the communications are private.... If the telephone has been modified as mentioned, the fact the originator of the communication knew of the modifications as well as the circumstances of the modification will have to be established before it can be concluded that the communication has lost its private character."*

The Court appears to be saying, in obiter, that a relevant circumstance unknown to the originator of the communication cannot be taken into account in determining whether the objective test is passed. In short, Sirois, J. appears to support the narrow formulation.

A case having nothing whatever to do with communications broadcast over the airwaves, Regina v Rodney (1984) 40 CR 3rd 256 (BCSC), also appears to follow the narrow formulation. Rodney was an inmate at a British Columbia correctional institution and was making a telephone call to a woman on the outside. This call was intercepted and recorded and the Crown attempted to introduce it into evidence against Rodney in the absence of an authorization. The evidence showed that prison telephone calls were routinely monitored and that various warning signs to this effect appeared throughout the institution. In fact, the telephone system was permanently wired to an interception device. The Court commented on the fact that there was no evidence as to how long the accused had been an inmate at the institution, no evidence as to where in the institution he had been incarcerated, no evidence as to how often the accused had been taken to a location where he would have been able to see one of the signs and no evidence as to what direction he would have been standing in when and if he was frisked. The Court therefore concluded that it had a doubt as to whether it was reasonable for the accused to expect his telephone call to be private. Because the Court was willing to consider only those circumstances observable by the accused it is clear that the Court was applying the narrow rather than the broad test.

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In conclusion, although it is not a matter completely free from doubt, it is submitted that the narrow formulation of David Watt's objective test is the law in Canada.

iv) The American Position

Until recently federal wiretap legislation in the United States took the form of Title III of the Omnibus Crime Control and Safe Streets Act of 1968. Unlike the Canadian legislation, the American statute dealt differently with wire and oral communications. Wire communications, like those between two hard wired telephones, were essentially presumed by the legislation to establish a reasonable expectation of privacy. Under the Federal Wiretap Act a warrant was required to tap hard wire communications in all circumstances. In order for non-wire communications to be protected under the Act, the "utterer" must have had "an expectation that such communication is not subject to interception under circumstances justifying such expectation...". The test was, therefore, very similar to our Canadian one. The test was also similar to the protection provided by the Fourth Amendment of the United States Constitution which protects reasonable expectations of privacy.

In United States v Hall et al 488 F. 2nd 193 (1973) a housewife in Tucson, Arizona accidentally intercepted radio telephone conversations on a scanner. She alerted the police to the fact that these conversations seemed to involve drug trafficking and they were subsequently monitored. The Court found there was no reasonable expectation of privacy and allowed the communications into evidence. No inquiry was made by the Court as to whether the particular circumstances surrounding the originators of the conversations might have led a reasonable man to expect privacy. We are, therefore, unable to determine whether the narrow or broad formulation of the objective test was used.

In United States v Jimmy Hoffa 436 F. 2nd 1243 (1970) the Court determined that the Fourth Amendment did not render inadmissible conversations between people using FM radio telephones. At page 1247 the Court had the following to say:

> "Surely, there was no expectation of privacy as to the Hoffa calls in Detroit which were exposed to everyone in that area who possessed an FM radio receiver or another automobile telephone tuned to the same channel."

Once again, no inquiry was made as to the particular circumstances surrounding the originators which may have lead them to believe their calls were private.

continued...../11

The most helpful American case is Edwards v Bardwell and John Doe 632 F. Supp 584 (1986). In that case an action was brought against the U.S. Attorney and an unknown operator of a radio scanner because conversations between an attorney and his client had been intercepted. One of the parties to the conversation was using a radio telephone and the other was using a hard wired telephone, the same situation as exists in Mr. Smith's case. The Court found that none of the communications were covered by the Federal Wiretap Legislation and said at page 589:

> *"... this Court considers that when either end of a communication originates over a radio telephone, that conversation is an "oral" communication and the fact that the communication travels in part on a line to a land line telephone and back to a radio transmitter does not convert it to a "wire" communication. There is no reasonable expectation of privacy in a communication which is broadcast by radio in all directions to be overheard by countless people who have purchased and daily use receiving devices such as a "bearcat" scanner or who happened to have another mobile radio telephone tuned to the same frequency.*

The Court in Edwards did not consider the circumstances immediately surrounding the parties speaking on the land line telephones and whether those circumstances would cause those parties to reasonably expect privacy. By ignoring this consideration, it may be that the U.S. District Court did not consider it relevant and was applying the broad formulation of the objective test. The court apparently found that all communications which involved, in part, a radio broadcast, resulted in public communications whether or not the parties using the land line telephones on one end of the conversation reasonably expected privacy based on the circumstances immediately surrounding them.

It is interesting to note that following these decisions the U.S. Congress amended the Federal Wiretap Statute to provide blanket protection to all cellular telephone conversations.

continued...../12

3. Application of the Tests

a) Subjective Test

Mr. Smith, Ms. Smith and Ms. Sinclair all indicated to the police that they believed their recorded telephone conversations to be private. However, the recorded comments made by Mr. Smith to both Ms. Sinclair and Ms. Smith regarding the supposed lack of confidentiality provide evidence tending to show that all three of these originators did not subjectively expect their conversations to be private. Depending on how the court views the evidence, a determination of the subjective expectations of Mr. Smith, Ms. Smith and Ms. Sinclair could go either way, in my view.

The situation in relation to Mr. Stewart is different. The evidence shows that he was speaking on a hard wire telephone and he has said to the police that he fully expected his conversation to be private. Additionally, there are no recorded comments which would tend to show that Mr. Stewart was aware that the conversation in question involved the use of a mobile telephone. A Court would undoubtedly find that Mr. Stewart's subjective expectation was that his call would be private.

b) Broad Objective Test

An application of the broad objective test would apply equally to all originators in this case. Canadian Courts have yet to face a wiretap case involving a radio or cellular telephone. In the United States, however, the numerous cases dealing with the Federal Wiretap Legislation prior to its amendment universally found that radio telephones did not give rise to a reasonable expectation of privacy. On this basis I predict that a Canadian Court, if it sees fit to apply the broad objective test, will come to the same conclusion in relation to all communications in the Smith case and find that none of the communications are private.

c) Narrow Objective Test

Mr. Smith, Ms. Smith and Ms. Sinclair were all aware that their communications were being broadcast over the air to and from Mr. Smith's car telephone. Would a reasonable man, under these circumstances, with a reasonable man's understanding as to how the technology operates, expect the communications to be free from interception? It is difficult to predict how a court would answer this question because of the total absence of judicial precedent but I predict that Courts would find there did not exist a reasonable expectation of privacy.

continued...../13

The situation from the standpoint of Mr. Stewart is entirely different. On an application of the narrow objective test which, in my opinion, is the law in Canada, the Court would conclude that Mr. Stewart's expectation of privacy was reasonable in the circumstances. His immediate circumstances would lead a reasonable man to believe that an ordinary and secure telephone conversation was taking place. That would make communications originated by Mr. Stewart "private communications".

C. POSSIBLE CHARGES

1. Disclosure of Information - Section 193

Mr. Graves, Ms. Pelletier, Mr. Sihota and members of the press gallery could all potentially be guilty of unlawfully disclosing an intercepted private communication. In order to obtain a conviction the Crown would be required to prove the following elements:

a) A communication has been intercepted.

b) The communication is a private communication.

c) The interception was accomplished by means of an electro-magnetic, acoustic, mechanical or other device.

d) There was no consent on the part of the originator or the person intended to receive it.

e) Any part, or the substance, meaning or purport of the private communication were used or disclosed or the existence of the private communication was disclosed.

f) That the disclosure was made wilfully.

Obviously a large number of people could potentially have unlawfully disclosed private communications. Although I intend to canvass later whether proposed prosecutions are in the public interest, I feel compelled at this stage in my analysis to point out that I do not feel it would be in the public interest to consider Ms. Pelletier and members of the media who broadcast Mr. Sihota's press conference to be potential accused. The various members of the media, although they may technically be guilty of the offence, were simply publicizing further the information released to the public domain by Mr. Sihota. Ms. Pelletier's potential breach of section 193 of the Code is minor as well since she released the information to only one individual, Mr. Sihota and not for the purpose of disclosing it publicly.

continued...../14

Eliminating Ms. Pelletier as a potential accused would also allow the Crown to call her as a witness against the remaining two potential accused, Mr. Sihota and Mr. Graves. In my opinion, proceeding on a joint information against Mr. Sihota, Ms. Pelletier and Mr. Graves would result in the Court obtaining only a skeletal outline of the disclosure of these communications. It would be far more satisfactory to consider calling Ms. Pelletier to testify against Mr. Graves and Mr. Sihota.

If that were done there would be no difficulty in establishing that Mr. Graves and Mr. Sihota knew that a communication had been intercepted by means of an electro-magnetic, acoustic, mechanical or other device without the consent of the originator or the person intended by the originator to receive it. There would also be ample evidence to prove that the disclosure of the communications was done wilfully by both Mr. Graves and Mr. Sihota.

The only element left to consider is knowledge by Messrs. Sihota and Graves as to whether the communications disclosed were "private". If we accept that the Court would apply the narrow objective test, then all intercepted communications which originated on a hard wire telephone would be private communications if the originator subjectively intended them as such. Before they disclosed the tape recording of the intercepted conversation between Messrs. Smith and Stewart the evidence shows that both Mr. Graves and Mr. Sihota knew that one of the parties to the conversation, Mr. Smith, was using a mobile telephone. With respect to the other party, who turned out to be Mr. Stewart, both Mr. Sihota and Mr. Graves must have known that it was likely that he was speaking over a hard wire telephone and was unaware that the conversation was being transmitted over the airwaves. When Messrs. Sihota and Graves wilfully disclosed the entire conversation they were exhibiting recklessness as to whether the conversations disclosed included a private communication. It is important to bear in mind throughout this analysis that ignorance of the law regarding the definition of private communication would not constitute a defence.

Ordinarily, recklessness is sufficient to constitute mens rea. However, does the use of the phrase "wilfully discloses such private communication" in section 193 mean that a higher level of mens rea is required in relation to the knowledge of the privateness of the communication? I think not. In my opinion the above phrase contains two elements of the actus reus, namely the act of disclosing a communication and the requirement that the communication is a private communication. The adverb "wilfully", in my view, applies only to the former leaving ordinary mens rea, which includes recklessness, to apply to the latter. There is support for this position in Glanville Williams textbook "Criminal Law. The General Part" 2nd edition (1961) at page 65:

> "In at least one instance the word "wilfully" in a statute has been held to embrace recklessness. In Holroyd (1841) 174 E.R. 308 Maule, J. directed the jury that on an Indictment for wilfully putting barrels on a railway in such a manner as to obstruct the engines, it was sufficient to prove that the defendant designedly placed the barrels there knowing that they would be likely to produce an obstruction and not caring whether they produced an obstruction or not."

To draw a parallel between the Holroyd case and this one, Messrs. Graves and Sihota designedly released the conversation between Messrs. Smith and Stewart knowing it was likely to contain private communications, not caring whether such communications were present or not.

The above statement of the law in Glanville Williams was referred to by the Ontario Court of Appeal it its comprehensive review of the law relating to wilfulness in Regina v. Buzzanga and Durocher (1979), 49 C.C.C. 2nd 369 at page 379. Ultimately that Court decided that the application of the term "wilfully" depended on the context in which it is used. In the specific context of the charge in Buzzanga and Durocher, the Court found that recklessness was not sufficient. In the instant case, in my opinion, the term "wilfully" is used in a context entirely different than that in Buzzanga and Durocher and substantially similar to that in Holroyd. I conclude, therefore, that recklessness as to the privacy of the communications is sufficient mens rea, and that such recklessness on the part of Messrs. Graves and Sihota could be successfully argued in this case.

2. Unlawful Interception - Brian Graves - Section 184 (1)

Borrowing on the analysis above on the issue of recklessness, in order for the Crown to prove that Mr. Graves unlawfully intercepted private communications originated by Mr. Stewart to Mr. Smith the Crown would be required to satisfy the Court that Mr. Graves, during the time he recorded the conversation between Messrs. Stewart and Smith, knew it was likely that this conversation would contain private communications.

Before he disclosed the contents of the conversation to Ms. Pelletier, Mr. Graves would have had the opportunity to hear the conversation in its entirety and consider whether any of the statements made provided evidence as to the subjective and objective expectations of

continued...../16

privacy of the two parties. Because the offence of unlawful interception would have occurred at the very moment Mr. Graves picked the conversation up on his scanner he would have had no opportunity to consider the contents before the actus reus was complete. In my opinion, it would be very difficult for the Crown to establish that Mr. Graves, at the very moment of interception, realized it was likely that the conversation contained private communications. As a result, I do not believe the offence could be proved.

Even if I am wrong, I am of the opinion that the offence of unlawful disclosure more appropriately addresses the gravamen of Mr. Graves' behaviour. It was not the initial interception of the conversation which caused any harm but rather its subsequent disclosure. For these reasons, I do not believe a charge of unlawful interception should be laid against Mr. Graves.

D. CONCLUSION

It is my respectful opinion that both Mr. Sihota and Mr. Graves committed an offence by unlawfully disclosing private communications made on June 12, 1990 between Mr. Stewart and Mr. Smith. Once again, I am pleased to advise you that this opinion is shared by all members of the prosecution and investigation teams.

E. CHARGING GUIDELINES

According to the Terms of Reference it is now my task to determine whether there is a substantial likelihood of conviction in relation to the charges mentioned above and whether it would be in the public interest to proceed with charges.

Upon an application of the law as I understand it to all of the available evidence, which I reviewed in detail, it is my opinion that if Mr. Sihota and Mr. Graves are charged with unlawfully disclosing private communications there is a substantial likelihood of a conviction resulting.

I must now determine whether it is in the public interest to proceed with these charges. I use as a guide the charging standard you sent to me with your letter of July 20, 1990. However, two of the criteria I find impossible to apply since I am unfamiliar with your jurisdiction. Their application will, out of necessity, have to be determined by the British Columbia Department of the Attorney General.

The allegations of disclosure of the communications in this case are serious indeed. The interception by Mr. Graves was not isolated and random but was rather part of a long and concentrated pattern of eavesdropping on a particular person.

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The disclosure by Mr. Sihota of the conversation between Mr. Stewart and Mr. Smith was not the passing along of this information to one or two individuals but involved dissemination to the entire country through the news media.

Mr. Sihota maintains that his disclosure, although unethical, was justified due to the public interest in bringing the contents of the conversation to light. This position does not make a prosecution against him contrary to the public interest, in my view. Parliament has decided that the interception and disclosure of all illegally intercepted private communications is criminal regardless of the content of the communications.

After his disclosure, Mr. Sihota indicated numerous times that he had received legal advice that the communications in question were not private. Does this make a prosecution against him contrary to the public interest? As indicated above, Mr. Long's opinion was not unqualified but rather served to put Mr. Sihota on notice that certain of the communications might not be private. The legal advice does not, therefore, make a prosecution against Mr. Sihota contrary to the public interest.

According to the guidelines you sent to me regarding the public interest in pursuing prosecutions the Crown must consider the harm, if any, suffered by the victim. A number of people, including Messrs. Firestone and Stewart, suffered great damage of their reputations as a result of the disclosures made by Messrs. Graves and Sihota.

The two criteria I find it impossible for me to apply are, first, whether the desired result can be achieved without a court proceeding. One would have to be intimately familiar with all of the available alternatives to prosecution in British Columbia to make that assessment. Secondly, to what degree does this offence represent a community problem which cannot be effectively dealt with otherwise. The community referred to must at least be within the borders of British Columbia. A consideration of this criterion again requires an intimate familiarity with that Province. It may be that you would want to take into consideration the general knowledge of the public at this time as to what is a private communication and whether, by advising the public of the law to be applied henceforth to the disclosure of such communications that would be a proper alternative to prosecution given the problem represented in the community by this offence.

In light of all of the above, it is my opinion that a prosecution against Messrs. Graves and Sihota for unlawfully disclosing private communications between Mr. Stewart and Mr. Smith would be in the public interest subject to a determination of the two criteria I am unable to assess.

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F. RECOMMENDATION

It is my opinion that Mr. Moe Sihota and Mr. Brian Graves should be charged with wilfully disclosing private communication made on June 12, 1990 between Mr. Bill Stewart and Mr. Bud Smith subject to the aforementioned proviso.

Yours truly,

Neil McCrank
Deputy Attorney General

Alberta
ATTORNEY GENERAL

Office of the Deputy Attorney General

9833 - 109 Street, Edmonton, Alberta, Canada T5K 2E8 403/427-5032

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 79
DATE: Aug 27/90

PRIVATE AND CONFIDENTIAL

August 23, 1990

Chief Superintendent John Sebastian
Officer in Charge
Federal Operations
657 West 37th Avenue
Vancouver, British Columbia
V5Z 1K6

Dear Chief Superintendent Sebastian:

Re: Allegations of Obstruction of Justice and Disclosure of Private Communications Referral from Deputy Attorney General of British Columbia

Further to our meeting of August 21, 1990, enclosed please find a draft charge prepared against Brian Graves and Moe Sihota which I have recommended to the Deputy Attorney General of British Columbia be laid in this matter subject to his consideration of the charging policy in British Columbia as set out in my opinion of August 23, 1990.

I am also enclosing your copy of that final opinion.

It will now be for the Deputy Attorney General to direct whether or not the charge proceeds and if so, to determine the timing of the process involved.

Once again, thank you for your excellent co-operation throughout this difficult and time consuming investigation.

Yours truly,

Neil McCrank
Deputy Attorney General

Attachments

C.C. Mr. E.N. (Ted) Hughes, Q.C.

E.N. (Ted) Hughes
Deputy Attorney General
Press Conference
August 24, 1990
10:30 a.m.

DRAFT

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 80
DATE: Aug 27/90

..... what I would describe as a mild reprimand from the Public Affairs Branch of my ministry for not being sensitive to deadlines that some of you have vis a vis the time of this conference. I appreciate that the occupant of the chair that I fill this morning is generally a politician who wants to be seen and heard and hence the sensitivity of those people to those things. I neither want to be seen or heard, but I'm here because I believe that I have a duty and responsibility to the, my employer, the government of British Columbia and to the people of this province. And I will henceforth try to realize that there are others that I should take into consideration when I fix times having had the reprimand.

I attended in Edmonton on Wednesday afternoon of this week the 22nd of August and had with me Hal Yacowar, the Acting Assistant Deputy Minister of Criminal Justice for this province and we met for a couple of hours with Mr. McCrank and two of his very senior officials who will be named later this morning and I brought back with me an opinion bearing that date on the issue of the allegation of obstruction of justice. And that allegation is referred to by Mr. McCrank and, incidently at the end of this conference this morning there will be a copy of his letter available for you all so you don't need to think you have to write things that I guess I'm reading from that letter, if you want to.

But in ... but on page 1 of this 23 page letter which I received from Mr. McCrank. He defines his responsibility with respect to the first reference as being:

> "allegations of attempt to obstruct justice that arose as a result of intercepted and recorded telephone conversations between the former Attorney General of B.C., Bud Smith, Q.C., and others."

cc [illegible]

Now, the document that will be released to you this morning over the signature of Mr. McCrank, is his full opinion less the last line nine, nine lines that appeared .. appears .. appeared on page 6 of his opinion. Mr. McCrank raised with me the removal of those nine lines in that they could be seen to impact on others. And I agreed with his assessment, but I can assure you that their removal has no bearing whatever on the substance of the opinion and does not impact on the orderly reading of it. But it is precaution in earnest to others and detracts in no way from what's recorded on the other 23 pages and indeed the only part of page 6 that you have in your possession. .... I told Mr. McCrank that it would be my intention to release his letter and he did say that he would like me to pass on his view that it is best read as a whole because if taken in parts, in isolation, there is a danger of a quotation being made out of context but I leave that to the abilities of the respective members of the media that are here.

I want to read to you the conclusions in that report which appear at page 22.

> "It is my respectful opinion that after a careful review of the available evidence particularly the two (2) relevant telephone conversations between Messrs. Smith and Stewart and between Mr. Smith and Ms. Sinclair and all the surrounding circumstances of these conversations, and after applying the law as I understand it, to this evidence, there are no grounds for ~~the~~ proceeding with charges of attempt to obstruct justice against Mr. Smith or anyone else.

> "In order to ensure that all other avenues were canvassed I examined other sections of the Criminal Code to see if there were any applicable sections. The only section that had any relevance to this evidence was Section 122, Breach of Trust. My review of the law and its application to the evidence led me to believe that it was also inapplicable. In this instance there is no suggestion that Mr. Smith used the office of the Attorney General in any way to accomplish anything. If he had intended to use his office in some fashion he could have intervened to "stay" the proceedings which he chose not to do."

And later on that page, the Recommendation:

> "It is my opinion, which is shared unanimously by all members of the investigation and prosecution teams, that there is no evidence in the Report to Crown Counsel to support charges of attempt to obstruct justice against Mr. Smith or any other person.
>
> "I would like to express my appreciation to Chief Superintendent John Sebastian and Inspector Ernie MacAulay for their cooperation and assistance in addressing this matter. They showed considerable patience in responding to my many requests for more interviews and documents and always approached this task in a full spirit of cooperation.
>
> "I would like also to indicate to you that this assessment and opinion would not have been possible without the capable assistance of two extremely competent Crown Prosecutors, Bruce Fraser, Q.C. and Greg Lepp. They toiled endlessly with me in dissecting, analyzing and postulating on the law and the evidence. It was a pleasure to work with them.
>
> "Thank you for your cooperation and for providing me with an opportunity to work on this most interesting assignment."

signed Neil McCrank, Deputy Attorney General of ~~British Columbia~~ Alberta, copy going to Chief Superintendent John Sebastian and the letter was addressed to me.

Now that concludes that aspect of this matter. There is no question that the recommendations, the conclusions are accepted as far as I'm concerned. I just want to thank Mr. McCrank and his two colleagues who have been identified for working hours and hours and weekends and I know evenings and so on to produce this document and to deal with the other matter that I have refered ~~to with them,~~ to them and I will now comment upon. And I want to express on behalf of the government and the people of this province appreciat~~e~~ion for what they've done and I hope in some more formal environment I'll be able to pass those remarks directly to those gentlemen.

Now the second issue is referred to at the top of page 2 of the letter that has ... that will be distributed to you. And it details that issue as the following:

> "allegations of criminal conduct arising from the interception, recording and disclosure of the above noted telephone conversations."

Now with respect to Mr. McCrank's letter that you will be receiving, of August ~~21~~22st addressing the first issue having identified the second issue on page 2 as I've indicated, he then makes this comment on page 22:

> "Issue #2 Possible Criminal Charges Concerning The Interception of Communications
>
> The report on this issue will be contained in another letter on which I am currently working."

PROSECUTE INQUIRY
EXHIBIT # 81
DATE: Aug 27/90

Transcription of Press Conference
Press Theatre, Parliament Buildings
Victoria, British Columbia
E.N. (Ted) Hughes, Q.C.

August 24, 1990 at 5 pm

Well, I told you this morning that I expected to re-appear here within 72 hours and having found it possible this afternoon, or early this afternoon, that it could be sooner than later, I proceeded to make arrangements for this time this afternoon.

I come to the matter of possible criminal charges concerning the interception and disclosure of telephone conversations.

Mr. McCrank was requested to provide his decision on the allegations of criminal conduct arising from the interception, recording and disclosure of the telephone conversations.

In my letter of instruction to Mr.McCrank, he was advised to use the standard two-part test applicable to all criminal prosecutions in British Columbia -

1. is there a substantial likelihood of conviction;
2. if so, is it in the public interest to proceed with this prosecution.

Section 193 of the Criminal Code creates an offence to disclose private communications intercepted by means of a device without the consent of one of the parties.

Private communication is defined in section 183 as, and I quote -

> "any oral communication or any telecommunication made under circumstances in which it is reasonable for the originator thereof to expect that it will not be intercepted by a person other than the person intended by the originator thereof to receive it."

All parties to a conversation can be originators of their communication to the other parties. If any party to a communication has a reasonable expectation of privacy, then the interception and disclosure of that communication is an offence. Anyone who intercepts or discloses an intercepted private communication without the consent of a party to the communication commits an offence with certain limited expectations, none of which apply here.

Mr. McCrank found that in one case an unlawful disclosure of private communication occurred. Mr. McCrank reached that conclusion because, in that case, the party was communicating on a cellular phone to another party speaking on an office phone. That other party having had a reasonable expectation of privacy. That party believed that an ordinary and secure telephone conversation was taking place.

Anyone who disclosed the existence of that communication or who disclosed the communication itself, or any part thereof, may have commited a criminal offence.

Based on the foregoing conclusions of Mr. McCrank which he drew with the reports he had in front of him, he was led to conclude that a substantial likelihood of conviction existed against certain individuals if criminal charges were laid.

However, he decided that whether it was in the public interest for charges to proceed was a matter that had to be determined by me since key public interest considerations could not be fully appreciated without a complete understanding of the situation in British Columbia.

This meant that the decision as to whether to proceed with charges was now back in my lap.

In particular, Mr. McCrank noted that and I quote him with reference to the two criteria from our points under our public interest consideration -

> "The two criteria I find it impossible for me to apply are, first, whether the desired result can be achieved without a court proceeding. Once would have to be intimately familiar with all of the available alternatives to prosecution in British Columbia to make that assessment. Secondly, to what degreee does this offence represent a community problem which cannot be effectively dealt with otherwise. The community referred to must at least be within the borders of British Columbia. A consideration of this criterion again requires an intimate familiarity with the province. It may be that you would want to take into consideration the general knowledge of the public at thistime as to what is a priate communication and whether by advising the public of the law to be applied

> henceforth to the disclosure of such communications, that would be a proper alternative to prosecution given the problem represented in the community by this offence."

As is apparent from the above, the two factors I was asked to consider by Mr. McCrank in determining if it is in the public interest to prosecute are -

1. What alternatives to a prosecution are available in British Columbia?
2. Can this alleged crime be effectively dealt with by advising the public of the state of the law and how it will be dealt with henceforth.

Using these two factors, it is my belief that the public interest is best served, in this matter, by declining to prosecute and by recommending to the Premier that the Province of British Columbia approve an order in council which will extend the terms of the Owen Commission to include an examination of the process followed in my decision today not to prosecute these persons.

I am motivated, in part, by a prosecution delaying the Owen Inquiry while such a case winds its way through the courts over many months, if not years. The uncertainty that that could create within the justice system based upon the things that I mentioned this morning is, in my view, horrendous.

I will read you the terms of reference - and you can have copies of them when you leave - that I am recommending to the Premier be applied - be added on to the existing terms of reference of the Owen Inquiry. I can tell you that I have made an inquiry, not directly to the Premier but to the Deputy of the Premier this afternoon, whether my advice would be accepted that there be additions to the order in council. I have an answer back in the affirmative.

I can tell you also that an hour ago I spoke to the Attorney General and told him what I was going to do this afternoon and while his answer was as one would expect it to be from the Attorney General, it was nonetheless comforting to hear it, and it was that his expectation was that I would do the right thing.

The additional terms of reference that I am recommending be added to the order in council - and I am hoping it will receive the Lieutenant Governor in Council's approval on Monday morning - are that

- the appropriateness of the Deputy Attorney General of British Columbia referring to the Deputy Attorney General of Alberta the issue of whether or not to prosecute Stuart (Bud) Smith, Q.C. on allegations of attempting to obstruct justice as a result of intercepted and recorded telephone conversations between Mr. Smith and others;
- the appropriateness of the Deputy Attorney General of British Columbia referring to the Deputy Attorney General of Alberta the issue of whether or not to prosecute persons on allegations of criminal conduct arising from the interception, recording and disclosure of certain telephone conversations, and
- the appropriateness of the Deputy Attorney General of British Columbia applying the criterion of public interest in deciding not to prosecute persons on the recommendation of the Deputy Attorney General of Alberta in response to the referral referred to in the preceding term of reference.

In other words, I am asking the Owen Inquiry not only to give consideration to the positions I have taken over recent weeks in making the references to Alberta, but I am asking that the appropriateness be inquired into and reported on with respect to my applying the criterion of public interest, that I have applied today, in deciding not to prosecute persons. While I have made this decision, and believe it is the right one, it is only right that it be canvassed in the public domain and that is my recommendation and I am satisfied that it will be, based upon the information I have that the Premier is prepared to expand the terms of reference. That, from my judgment, must take place because I have made a major decision that I believe is right but I want the process reviewed and that, I am now satisfied, will be done.

I can further advise you that today I met with senior Royal Canadian Mounted Police officials and they accept my decision in this regard.

Now, that process that will take place, that review by Owen, deals with the first of the two public interest matters referred back to me by Mr. McCrank - what alternatives to prosecution are available in British Columbia. With respect to the other reference back - can this alleged crime be effectively dealt with by advising the public of the state of the law and how it would be applied henceforth - I say that these allegations cover an area of the law that has not had the benefit of considerable reasoned court judgments.

This area of the law involves considerations of new types of cellular technology that were not in place at the time the relevant provisions of the privacy sections of the Criminal Code were enacted. The legal opinion of Mr. McCrank is that a communication may be private notwithstanding one of the parties involved in the conversation is using a cellular telephone.

I am today letting the public of this province know that, in the future, the interception and/or disclosure of such conversations may result in criminal prosecution.

The disclosure of the telephone intercepts that took place here, serious though they be and serious they are, do not, in my judgement, strike at the very foundation of the administration of criminal justice system of this province in the way that the allegations of coverup in the Reid decision and of obstruction of justice do.

To me, it is most important that the administration of criminal justice be returned to a firm footing in the province with the restoration of public confidence the paramount consideration. This is best achieved by immediately proceeding with the Owen Inquiry on its expanded mandate. That factor that I have just referred to is what primarily motivates me to do what I have done today. Namely, and I repeat, that the disclosure of the telephone intercepts that took place here, serious though they be and they are, do not strike at the foundation of the administration of criminal justice in the province in the way that the allegations of coverup in the Reid decision and of the obstruction of justice do. To me, it is most important that the administration of criminal justice be returned to a firm footing in the province with the restoration of public confidence the paramount consideration and as I say that is, in my judgment, best achieved by immediately proceeding with the Owen Inquiry on the expanded mandate.

I will not be releasing today the legal opinion of Mr. McCrank. It will be made available upon request to the Owen Commission for such purposes as he deems necessary in order to fulfil a new mandate.

That is my statement.

QUESTIONS/ANSWERS following Press Conference
August 24, 1990 at 5 pm
E.N. (Ted) Hughes, Q.C.

Q What conversation did McCrank deem to be possibly criminal?

ENH The conversation that took place between the Attorney General and Mr. Stewart.

Q and who did you believe would be subject to charges.

ENH I have no intention of discussing names of persons who are not going to be charged - that's been the history and practice and procedure of our Ministry over several years and that will not be violated by me today. Whether Mr. Owen wishes to request the letter and do anything with it will be his decision.

Q I'm not quite sure, you've asked this inquiry or you want the mandate expanded to back up your decision not to prosecute but to do what else? Are you saying that they should look at this and then come back and maybe say you're wrong there should be a prose----

ENH I am expecting them to comment on the appropriateness of me applying the criterion of public interest in deciding not to prosecute persons on the recommendation of the Deputy Attorney General of Alberta and that will be open to Mr. Owen to do with - that having been referred to him - whatever he wants.

Q What I am saying is does that mean if this Inquiry finds they don't agree with you that we come back here and then again we change this?

ENH We will see what Mr. Owen says and I won't go beyond that.

Q So the matter is not dropped...all we're doing is...

ENH I have made my decision that there will not be charges and I will expect Mr. Owen to comment on the appropriateness of what I've done.

Q Sir, the recommendations of the Owen Inquiry will still not be binding, is that right?

ENH Oh no, they're only recommendations.

Q So you're not bound to change the decision even if you're ruled against?

ENH No.

Q Mr.Hughes, you will not elaborate on why the public interest will not be served?

ENH I have said all that I propose to say here this afternoon and with these additional terms of reference, I assume that there'll be further questions put to me at the Owen Inquiry.

Q Could we just go back to McCrank recommendation - well, I guess it wasn't a recommendation, but he did suggest that there could be a charge laid in this one incident and yet my understanding of this is that if the government felt that this was what he would recommend and felt that you guys would carry this out....all you're telling us....

ENH All I'm telling you is that he made his remarks with respect to the first criteria - the substantial likelihood of conviction - and referred back to me the second criteria of public interest for the reasons that I read out to you from his report to me.

Q Why did we have this guy do this if he's not going to use both and he's going to bring it right back to you and you sent it all the way to him?

ENH I'm quite comfortable with what he's done and what I've done, sir.

Q Did you put the public of British Columbia on notice that cellular conversations, taped and distributed, may be prosecutable?

ENH Now let me read to you what I said again - I am letting the public know that, in the future, the interception and/or disclosure of conversations may result in criminal prosecution.

Q and yet, only one according to McCrank, was prosecutable and that involved a non cellular and - I'm not sure about the technical things here - you're saying, are you not, that the public should not expect conversations between two cellular phones are termed open season where McCrank says that it's only prosecutable if one of them is private but one is ...

ENH I have here the Regional Crown Counsel on Vancouver Island who has expertise in this area and while I don't propose to give a long dissertation of the law here today, I'm going to ask Mr. Bob Gillen if he'll come down and just pull up that chair and he's likely heard the question and will I think be able to expand on that with more expertise than I have.

A Thank you, sir.

BG The opinion expressed by Mr. McCrank in relation to the legality of the interception related to a cellular phone going to an office phone. The person who is the recipient on the office phone and not aware that he is speaking on a cellular phone has a reasonable expectation that he is speaking to a person in a position that is not going to be intercepted and, as a result of that, has a reasonable expectation of privacy. It's deemed then to be a private communication. That being the case, it's subject to an offence.

Q What made that different from the calls from Bud's car to Sinclair's home or Bud's car to his own.

BG It's an awareness of the person as to whether or not they're constantly in contact with another person who utilizes a telephone service that's cellular. It may be that the conversations contained discussions on whether or not they were on cellular phone.

Q My question is why would you put the public on notice about the other kind which is quite clear now that they're interceptable.

BG That's a question that's a tad moot right here. I can tell you this - that the law in this area, as Mr. Hughes has pointed out, is at its frontier stage and it's very difficult to predict what a court might say about two cellular phones, one person speaking to another, and whether or not the range of channels, for instance, may make a difference whether or not devices that are used to thwart interception may make a difference. That person's right to expect privacy may depend on what actions he's taken relative to avoiding interception.

ENH Now, I think that deals with that subject - is there anything else?

Q This is semi-related to your earlier statement - were the parties to these phone calls, as part of the investigation, asked about their awareness of whether this was a cellular call or was it totally based on the tape?

ENH I have not seen the reports to Crown Counsel as they went to Alberta but my understanding is that the police officers conducted a full inquiry and interviews with all those that they wanted to, providing those would speak to them and so I think I can answer your question and say that all those people were invited to speak to the police - whether they chose to or not I don't know.

Q and would it follow that in terms of the earlier case this morning, their intention - the intentions of the people Mr. Smith and Mr. Stewart as what they intended to do with the information seems to be what the whole thing hung upon - were they questioned about what their intentions were?

ENH I don't know, I wasn't part of the questioning process.

Q Mr. Hughes, I know you don't want to edge into the politics but various public figures have said that somewhere and somehow in this whole weird case there's been wrongdoing of some sort - do you expect any concern on the part of the public that the things are unfolding to this point and yet no illegality or alleged illegality has been found yet?

ENH I am satisfied given a very difficult situation - the way it's gone - and from what I've said on both appearances here today, I have expectations that the Owen Commission will hear all the evidence; be weighed by a man I consider to have an impeccable reputation for fairness and impartiality in this province and I feel that his report, when it comes out, will do the required job without me, of course, knowing what evidence he's going to hear from many people or what his conclusions will be. I've know this man for close to ten years and, incidentally, he's not undertaking this assignment in his capacity as Ombudsman - he's a special commissioner for this purpose - and I think if you'll relate back to the letter I filed last time, not today, but earlier in July when I was here - I recommended on March 24 there be a judicial inquiry into the coverup allegations, hopefully, six months later, on Monday, we're going to get underway with that - it didn't turn out to be judicial in the sense that it's not presided over by a judge because the Chief Justice of the Province, for a good reason I am told and the reason was explained to me and I thought it was a good one, thought it was not appropriate for a judge to preside and persons that I was not in touch with in government made the arrangements for Mr. Owen to take on this Inquiry and I am anxiously awaiting my appearance there, as I've told you before, and I have great belief that man, who now holds this responsibility, will not be found wanting at the end of the day.

Q ...Mr. Owen make some kind of judgment on the public interest and whether it was violated in this sense - it's some kind of a final court...

ENH Well, I think you're going to have to wait his report.

Q Will the police files and subsequent interviews be made available through Mr. Owen's inquiry as a result of this expanded mandate?

ENH No, I don't think...we never make police files available, no, that's never done.

Q Is the reason you're not making Mr. McCrank's opinion on this one public because it contains the names of persons whom you're not going to charge...

ENH Yes

Q There are no evidentiary bombshells hiding in there?

ENH Oh no, that's the primary reason. We never deal with names when people have been investigated and a decision, for whatever reason, is made not to charge them. It can be quite inappropriate.

Q Well, except you did this morning sort of, I suppose..

ENH Well, I guess so, but if there was ever a very special case on that one, I guess, there it was.

Q In regards to the law, do we assume then that Mr. Stewart felt that Mr. Smith was on a private phone when they had their conversation? We're going back to Mr. Stewart's conversation with Bud Smith.

BG I think that is correct.
(Bob Gillen, I think)

Q This may be a small point on that but we're not using the word cellular as a generic term for the car phone are we? It's an actual cellular not associated with the cars ...

BG We're using it in the generic sense.

Q So it could be a car phone? Is in fact was it?

BG I don't have that information.

ENH Ok, well I think that's giving you the best we can and take it from there and those who are interested, I guess, we'll see you in Vancouver Monday morning. Thank you.

August 25, 1990
/g

"Further matters to be inquired into and reported on are

(a) the appropriateness of the Deputy Attorney General of British Columbia referring to the Deputy Attorney General of Alberta the issue of whether or not to prosecute Stuart (Bud) Smith, Q.C. on allegations of attempting to obstruct justice as a result of intercepted and recorded telephone conversations between Mr. Smith and others;

(b) the appropriateness of the Deputy Attorney General of British Columbia referring to the Deputy Attorney General of Alberta the issue of whether or not to prosecute persons on allegations of criminal conduct arising from the interception, recording and disclosure of certain telephone conversations; and

(c) the appropriateness of the Deputy Attorney General of British Columbia applying the criterion of public interest in deciding not to prosecute persons on the recommendation of the Deputy Attorney General of Alberta in response to the referral described in paragraph (b)."

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DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 82
DATE: Aug 27/90

FILE NO. 60645-58170/#13
REPLY TO A.G. Henderson

April 30, 1990

Discretion to Prosecute Inquiry
202 - 1275 West 6th Avenue
Vancouver, B.C.
V6H 1A6

Attention: Keith R. Hamilton
Secretary

Dear Sirs:

Re: Discretion to Prosecute Inquiry

Thank you for your letter of April 25, 1990 containing the terms of reference. I have decided to avail myself of the invitation in your letter to make a submission in writing upon issues relevant to the terms of reference.

I acted as counsel to the Comptroller General, Mr. Marson, throughout his in-camera hearing in relation to Bill Reid. I cross-examined Mr. Reid for several hours on the subject. Subsequently, I was asked to provide a formal, written opinion on whether or not Mr. Reid should be prosecuted. I declined to do so, as I felt that other, totally independent people should be giving that opinion. Subsequently, I did attend a meeting at which the question of whether or not to prosecute was debated at length and I did offer some verbal opinions in that meeting. Also present were John Hall, Q.C., Rick Peck, Q.C., Bob Wright, Q.C., Bill Stewart and Ted Hughes, Q.C.

The decision not to charge Mr. Reid was made in precisely the same way it would have been made for any other person, free of political influence or improper considerations or pressure of any sort. I will not comment further on the process itself as I expect it will be the subject of oral evidence at the hearing.

Your inquiry has a mandate to look at several very important issues which, to the best of my knowledge, have never been examined publicly. These are:

1. Should the decision to charge someone be made by the police or Crown Counsel?
2. What is the proper test to be applied when assessing the case?
3. Should the test be different in any way when the suspect is a prominent public figure?
4. What is the proper process to be followed when the suspect is someone who might be perceived as being able to influence the decision maker?
5. When the decision not to prosecute is made what, if any, public disclosure is appropriate?

1. Should the police or Crown Counsel make the decision?

In this province, at least since the mid 1970s, the decision to prosecute in complex or important cases has been made by Crown Counsel. In minor cases, the police will often lay the charge without a prior review by Crown Counsel. In many other provinces, all charges are laid by the police without prior reference to a prosecutor unless, of course, the police voluntarily seek out his advice. Which system is better?

The R.C.M.P appear to believe firmly that the police, not Crown Counsel, should make all charging decisions. One hears the suggestion from time to time that the police will make these decisions free from any taint of political influence while Crown Counsel cannot be trusted to do that. I do not agree.

Any decision maker must be free of bias and the appearance of bias. This means that employees of the Ministry of Attorney General should not be making a charging decision involving anyone in a position of authority over them, directly or indirectly, and police officers should not be making a charging decision concerning other police officers. Each may be perceived as biased in certain circumstances. The question of bias and perceived bias, then, does not provide a basis for assigning the task to one or the other.

I believe Crown Counsel are better suited to making charging decisions because the process involves not only a consideration of the evidence and its sufficiency but also a review of its admissibility. Since the advent of the Charter, the reasons for which evidence may be found inadmissible have expanded greatly and become much more complex and technical. Police officers are not as well equipped as Crown Counsel to make these determinations. In addition, since prosecutors spend considerably more time than police officers in court, they are better equipped to predict the outcome of a case and assess the weight of the evidence that has been gathered. Moreover, police officers who spend large amounts of time and money investigating a case may want a charge laid (or be perceived as wanting it) for personal or career reasons.

2. What is the appropriate test?

In this province, the test at the present time is: "is there a substantial likelihood of conviction?" In addition to this, one must also take into account the public interest. It is my understanding that the public interest, in this context, is invoked to refrain from charging someone, notwithstanding a strong case, on humanitarian grounds. The mother on welfare who steals food to feed her starving children is the classic example. To the best of my knowledge, the public interest is never invoked to justify charging someone when the evidence is incapable of meeting the first test.

In many other provinces, and in this province until approximately the early 1980s, the test is and was: "is there some evidence of each essential element of the proposed charge, such that a committal for trial at a preliminary hearing would be likely?" This is, of course, a much less onerous test. Many would say it had the virtue of allowing a full public airing of the evidence and arguments in a greater number of cases.

Two things happened in this province to cause us to change to a more onerous test. Throughout the 1970s there was a general perception amongst the defence bar, shared by some prosecutors, that too many weak cases were being "run through" the court system when a conviction was improbable. This was true. Indeed, the test says nothing about the likelihood of a conviction; if the prosecutor felt he could "get by the no evidence motion" (which is the same test as that applied at the end of a preliminary hearing) the charge was laid. All prosecutors are aware that a number of cases which meet this less onerous test are highly unlikely to result in a conviction. The test was popular, because it is always easier, on a personal level, for a prosecutor to lay the charge and let the court decide rather than to shoulder the responsibility of saying the evidence is inadequate.

The other thing which caused a shift to a more onerous test, in my opinion (and this is only my opinion), was the effect of restraint in Government spending in the early 1980s. Starting in approximately 1982 and lasting until about 1986, the longer and more complex cases were scrutinized very carefully primarily for reasons of cost. The Crown sought to avoid long and expensive trials except in cases where a conviction was likely. This was especially true in commercial crime cases. It seems to me that the present test evolved partly from this practice.

Whatever its original motivation, the present test has virtues. It ensures to the greatest degree reasonable that a suspect will not face the cost, personal trauma, and public shame of a criminal trial unless there is a significant likelihood he will be convicted. In this connection, it is important to bear in mind that there is no mechanism in our law for awarding costs to an accused who is acquitted, even if the judge were to say, "he should never have been charged." For example, had Bill Reid been charged and acquitted, I would estimate his legal fees to have been in the range of $30,000 to $80,000.

It is also undeniable that the mere fact of being charged tends to damage one's reputation if reported in the media. I have repeatedly observed during long and complex trials that media coverage of the Crown's opening statement (which takes place on the first day of trial) is more extensive and prominent than media coverage of the opening statements by defence counsel (which may take place several weeks later at a time when, possibly, the reporter is no longer present or following the case).

It must be recognized that the current test requires some weighing of the evidence by the decision maker. One must attempt to assess the cogency of the evidence and weigh its impact upon a judge or jury. One must take into account the defence, or probable defence, and consider its likely effect upon the court. All of this is much more difficult than the older test and makes it more onerous to explain to the independent observer the reasons for not charging someone. Experience and intuition come into play. A greater measure of trust is therefore reposed in the decision maker.

While I have some doubt about this, I am inclined to think that the current test is the better one.

3. Should there be a different test for prominent public figures?

I treat this as a serious issue because a number of people have suggested that there should be a different test for prominent public figures. I recall an editorial in the

Vancouver Sun which seemed to suggest that, whatever the decision involving Bill Reid might have been were he an anonymous private citizen, because of his prominent public position he should have been charged.

At the meeting I attended, a part of the discussion revolved around just this question. Serious thought was given to the idea that there should be a different, less onerous test for prominent public figures. My personal opinion, however, is that there should not.

The idea that every suspect should be treated equally before the law is so deeply ingrained in our system, and so fundamentally important to the perception of fairness we are seeking, that I believe only a consideration of over-riding public importance should be permitted to alter it. Only the most compelling of arguments should lead to the conclusion that one class of suspects should be treated differently from another in the charging decision. The rationale usually advanced with respect to public figures, like Bill Reid, is that the public's "right to know" is best satisfied by a criminal trial. Mr. Sihota and Mr. Harcourt appear to believe this.

In my view, the public's right to know is best satisfied through the mechanism of a public inquiry. The government could have, but did not, appoint a public inquiry to look into Bill Reid's involvement with the GO BC grant to the Semiahmoo House Society. Such an inquiry is far more capable than a criminal court of examining the issues in a way the public would find satisfactory. The formal rules of evidence do not apply and the boundaries of relevance tend to be more elastic. Public participation is permitted through the intervention process and television cameras may be allowed into the hearing.

In a criminal trial, by contrast, the focus is very narrow. One of the reasons why many members of the public found the Bennett insider trading trial so unsatisfactory was that the strict application of the rules of evidence (including the rule against hearsay), combined with the right of the defendants to silence (which they exercised), deprived the public of much information to which it felt entitled.

Moreover, I do not believe the public's right to know can take precedence over the right of a suspect to be treated fairly. The system will be perceived as unfair if certain people can be charged, not because the evidence is sufficient, but rather because the case as a whole has achieved such notoriety that there is a perceived need to ventilate the issues in public. While I would never suggest that a prominent public figure should be the subject of any sort of favoritism, neither do I believe that a person who takes on a public or political role thereby forfeits his right to be treated, in the criminal justice process, like any other person.

Allegations against prominent public figures are far more numerous that those against private citizens. For example, I recently dealt with a case involving sensational allegations of sexual misconduct between a young girl and several prominent people in this province. Had a charge been laid, there is no doubt in my mind that the case would have been headline news. However, the suspects passed lie detector tests, much of the evidence of the complainant was uncorroborated, and a fair bit of it was contradicted by other, objective, evidence. The independent private prosecutor reviewing the file ultimately decided not to charge. Under the old test, a charge would have been laid because it would not have been left to this prosecutor (or to the police, for that matter) to assess the credibility of the complainant.

4. What is the proper process when charges are considered against a prominent public figure?

To avoid the appearance of bias, it is necessary that such charges be considered by a private independent prosecutor. This is what happens at present.

The present practice is for the independent prosecutor (or prosecutors, for often two or three are used) to convey his opinion in writing to the Ministry of Attorney General which then makes the final decision. In my experience, the Ministry has always accepted the opinion of outside counsel and acted upon it. However, this practice does leave the perception that it is the Ministry, and not the outside counsel, who makes the ultimate decision. I think serious consideration should be given to a complete delegation of responsibility to the private independent prosecutor, so that he could announce (without reference to anyone in the Ministry or, where a police officer is the suspect, to the police) his decision. It is not clear to me that, under the present system, outside counsel is perceived by the public to have as much independence as, in fact, he enjoys.

5. When a decision not to charge is made what, if any, public disclosure is appropriate?

The traditional approach of the R.C.M.P and of the Ministry is to make no public disclosure at all. Even the fact that there was an investigation and that charges would not be laid has not been announced. Recently, there have been a number of departures from this and the R.C.M.P has confirmed on several occasions that an investigation was done and a decision not to proceed was made.

I find this a difficult question and have no firm opinion on it. Perhaps it might be appropriate here to make a distinction between cases in which the public has a legitimate and compelling interest and those which are merely routine. On the other hand, this is not consistent with the idea expressed earlier that everyone should be treated with equality in the charging process.

Whatever the practice is with respect to public disclosure, I believe that the suspect and his counsel should be told when an investigation is concluded. The suspect might then, for reasons of his own, choose to release the decision to the media. At present, the R.C.M.P is very good about disclosing this information but it is my understanding that, in the past, they have felt that the suspect has no right to know when an investigation concerning him has ended.

I hope you find these comments useful. I would be pleased to expand upon them if you think that would help.

Yours truly,

DAVIS & COMPANY

Per: A. G. Henderson

AGH/fp

J.M. PETER FIRESTONE, B.A., LL.B.
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PERSONAL AND CONFIDENTIAL

24th May 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 83
DATE: Aug 28/90

Moe Sihota, M.L.A.
Esquimalt-Port Renfrew
Room 166
Legislative Buildings
Victoria, B.C.
V8V 1X4

Dear Moe:

re: Private Prosecution of William Reid

This is to confirm that you contacted my office on the 22nd of May 1990 and indicated that the N.D.P. caucus had some funds to pay a private prosecutor, in the event that the Justice of the Peace approves the prosecution of Bill Reid. I would be happy to accept the retainer to prosecute this man.

As I have indicated to you throughout the process, it is my view that there is a "two-tier" system of justice in this province: one for the rich and one for the poor. From my perspective, this prosecution is not politically motivated but is motivated by a profound sense of injustice in that the rich are treated one way and the poor another.

I indicated in our brief telephone conversation that I would be prepared to do this prosecution "cheaply". I stand by that. Once the situation is made clear by virtue of the decision of the J.P. on the 28th of May 1990, you and I will sit down and determine what a "fair" fee would be. This would have to be based on the limited funds which are available to you and a calculation by me of the actual hours that will have to be spent to prepare and to prosecute, and also an assessment of the cost of living in Vancouver for the period of time that the trial and the preliminary inquiry, or both, proceed.

Thank you for considering my law firm and I look forward to further discussions with you on this matter once the ultimate decision is made by the J.P. My instincts tell me that the J.P. will approve the charge.

Yours sincerely,

Peter

J. M. PETER FIRESTONE

J.M. PETER FIRESTONE, B.A., LL.B.
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PERSONAL AND CONFIDENTIAL

14th June 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 84
DATE: Aug 28/90
KRH

Moe Sihota, M.L.A.
Esquimalt-Port Renfrew
Room 166
Legislative Buildings
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V8V 1X4

Dear Moe:

re: Private Prosecution of William Reid

First of all, let me just take a moment to thank you for retaining me on this private prosecution of Bill Reid. I have been of the view from moment one that this was a meritorious prosecution for administration of justice reasons. I think it is wrong for friends of the government to have the "no substantial likelihood of conviction test" be applied because it simply looks wrong. As was said throughout our last discussion in your office: "Justice must not only be done, it must be seen to be done."

In our last discussion, it was agreed that I would treat this as a normal prosecution and what I propose to do, quite briefly, is to set out what has happened in other prosecutions that I have been involved with as a special prosecutor.

I propose to advise you on only those matters which are "out of the ordinary." I propose to run this case as counsel on a day-to-day basis without involving you. I propose to advise you as to the ongoing nature of the prosecution and what is going on. I will do it by letter. In terms of the billings, my request from the Attorney-General's ministry - and I think it is a sound one - is to do monthly billings. What I am proposing is to do monthly billings of disbursements so that you are given a running account of the disbursements as they accrue. I will not incur any out of the ordinary disbursements without first discussing the matter with you. For example, one of the things that comes to mind is that, pursuant to section 487(1), I am not of the view that a private citizen like myself can get a search warrant. I would not want to get the search warrant myself because that would make me a potential witness. What I would propose doing, if necessary, is to hire a private detective. The private detective I am thinking of is an ex-R.C.M.P. officer who has done search warrants in the past.

While I am on that issue, I have to tell you that this prosecution will pass through a critical phase within the next two to three weeks. If the Government decides to put roadblocks in front of us, we will know that within the next two to three weeks. I have FAX'ed letters to Ted Hughes, Brian Marson, and to Don Sorochan, counsel for Stephen Owen, requesting that there be voluntary compliance with me as a private prosecutor, to have the materials produced voluntarily which I will need to prosecute this case. I have also FAX'ed such a letter to Inspector MacAulay.

There are a number of different scenarios that are open to me at this stage. It goes from one end of the spectrum where none of these individuals cooperate, to the other end of the spectrum where they all cooperate. Somewhere along that spectrum there will be a sufficient amount of "roadblocks" which will make my job as private prosecutor untenable. In my dealings with the media from day one, I have taken the position as private prosecutor that the case is proceeding and that I am doing my best to put together a credible prosecution of Mr. Reid, given my lack of resources.

Once I get a response to these various FAX'es, I will then, as counsel, form an opinion as to whether I can properly prosecute Mr. Reid without the cooperation of the named individuals. It is impossible for me to tell you at this stage as to whether I will be able to put a proper prosecution together, without knowing the response that I will get to these FAX'ed letters.

To summarize, while I am hopeful that the prosecution will fly, I may very well come to you within the next two to three weeks and simply say that there has been insufficient cooperation. At that stage I may very well recommend that the charge be withdrawn by virtue of the lack of cooperation by the Government of British Columbia. I honestly believe, and I am confident, that this will not happen. However, I have to recognize that if the Government wishes to put roadblocks in my way, it can. In my view, if Stephen Owen refuses to cooperate, through his counsel Don

. . . 3

Sorochan, and the R.C.M.P. refuse to cooperate, then my hands will be tied.

Assuming that I get sufficient cooperation and the case proceeds, I will write you periodically indicating what is happening, but I will try to insulate myself from any political overtures. I recognize that I am working within a limited retainer and I may have to consult with you about extraordinary expenses by way of disbursements, but I can indicate to you, as I have said throughout, I am prepared to stay within the $15,000.00 ballpark.

I am going to contact you soon to meet and have the initial $3,000.00 retainer paid, because I have already incurred expenses and those expenses could mount if I have to make trips to Vancouver to get the documents or materials which I have requested in a way which does not detrimentally affect the integrity or continuity of the documents.

Thank you, once again, for retaining my law firm and I will do my best.

Yours sincerely,

Peter Firestone

J. M. PETER FIRESTONE

JMPF/jmb

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PERSONAL AND CONFIDENTIAL

21st June 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 85
DATE: Aug 28/90
KRH

DRAFT - FOR DISCUSSION PURPOSES ONLY

Moe Sihota, M.L.A.
Esquimalt-Port Renfrew
Room 166
Legislative Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Sihota:

re: Private Prosecution of William Reid

I was retained by you as the Informant in the abovecaptioned matter on the 11th of June 1990. I agreed to take the retainer and prosecute Mr. Reid based on the materials provided to J.P. Lim, and because in my opinion in this case there existed reasonable and probable grounds to believe an offence has been committed, and this case deserved to see the light of day.

I, pursuant to your instructions, wrote a series of FAX'ed letters requesting production of the relevant materials to those who I believed had custody of the relevant materials. I wrote letters to the following individuals:

1. The Deputy Attorney-General of British Columbia, Ted Hughes, Q.C.;
2. Mr. Brian Marson, Comptroller-General;
3. Inspector Ernie MacAulay, R.C.M.P.;
4. Don Sorochan, counsel for the Owen Inquiry.

From reading the brief prepared for J.P. Lim, it was clear to me that at least the following materials should be made available to me:

1. The Report to Crown Counsel prepared by Inspector Ernie MacAulay;

. . . 2

2. The transcript obtained by the Comptroller-General through his inquiry;

3. The original 58 exhibits which were filed with the Comptroller-General in relation to his inquiry;

4. Any witness statements and other relevant documents relating to the Reid prosecution.

It is my understanding and firm belief that all the above referred to materials are in the possession, custody and control of the Government of British Columbia. To date, I regret to inform you that there has been no compliance with my request for production of the relevant materials. I attach with this letter a bound volume containing all my FAX'ed requests, and a separate bound volume containing all the responses to my requests for disclosure of material.

Given the current situation, I find it untenable to continue with this prosecution of Mr. Reid. I do not think it fair to the administration of justice in this province to continue a prosecution as counsel for a private Informant when the Attorney-General of British Columbia, the senior law enforcement of the province, has indicated that he will not willingly, without a court order, provide the necessary material to prosecute this case.

As you know, I have acted for the Crown as an ad hoc prosecutor in similar cases of this nature. I have been provided in past cases with a Report to Crown Counsel, all the necessary documentation with original and copies for dissemination to defence, and I have also been given the services of an R.C.M.P. officer to assist me in my job as prosecutor. I take the position that the definition of "prosecutor" in the Criminal Code of Canada, Section 2, includes a private prosecutor. It is my view, as a matter of law, that there is no legal impediment which requires a court order to be obtained in order for these documents to be produced to me.

I recognize that this case has some special features to it. It is almost unheard of in my experience at the bar for the police to investigate, to prepare a Report to Crown Counsel, to recommend charges, and the Crown to refuse to prosecute. While I accept the proposition that not all cases tendered by the police forces are prosecuted, I would suggest that

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the vast majority of criminal cases are actually prosecuted by the Attorney-General and his ministry. In this case, the documents that I have requested exist. I am being denied access to these materials for no good legal reason, as far as I can determine. There is nothing stopping the Attorney-General of British Columbia, the senior law enforcement officer of the province, from cooperating with me as a private prosecutor, given the definition that I have referred to in the Criminal Code above.

In summary, therefore, I recommend you withdraw the charge against Mr. William Reid for the following reasons:

1. In my opinion, I have been obstructed as a prosecutor in this matter.

    - The Attorney-General of British Columbia has gone on record as saying that he will not cooperate with the private prosecutor without a court order.

    - The officials of the Attorney-General's ministry have confirmed this in writing.

    - The Attorney-General of British Columbia has gone on record since the laying of the private Information by you, repeating that his advisors indicate that there is no substantial likelihood of conviction. In my opinion, these comments by the senior law enforcement of the province, after charges have been laid, gives the appearance that the Attorney-General has sided with Mr. Reid, thereby prejudicing the fairness of the private prosecution.

    - It is my opinion that the very failure of the Attorney-General to cooperate with me as private prosecutor is a matter for public debate and such debate is for all intents and purposes precluded while this prosecution is ongoing.

    - It is my opinion that the very failure of the Attorney-General to cooperate with me as private prosecutor should be a matter of public debate and, in fairness to the accused, charges should be withdrawn so that this debate can proceed unhindered in any way.

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- In my opinion, the statement by the Attorney-General that his ministry would cooperate with a subpoena smacks of a position which can be summarized as "cooperation if necessary, but not necessarily cooperation." I reiterate that I see no legal impediment for the Attorney-General of British Columbia as the senior law enforcement officer from simply cooperating with me as a private prosecutor.

2. Without the cooperation of the Attorney-General and his ministry, my job as private prosecutor is impossible.

   - It is my opinion that the suggested subpoena power is useless to me. I have read the sections of the Criminal Code which deal with the subpoena power and I am of the view that a Provincial Court judge, or justice, can only issue a subpoena to a witness to bring documents at the date set for the hearing. It is my legal opinion, therefore, that I will be precluded from any advance preparation on this case without proper compliance with the Criminal Code.

   - I have reviewed the Criminal Code, and in my opinion I could rely on Section 487(1) of the Criminal Code, which allows me as a private citizen to get a search warrant. In order for me to get a search warrant, I would have to hire a private detective and I would have to obtain an order of the Justice of the Peace allowing me to search various offices. The spectre of having to get a search warrant for the Attorney-General's office, or his senior official's office, is totally unpalatable to me as a lawyer. Such a process is totally unnecessary.

   - Furthermore, I believe any attempt to obtain search warrants would be strongly contested at any event. It is my opinion that the position of the Attorney-General in this matter takes me from being a prosecutor to being an investigator. There is a standard tradition in our province and in our country that lawyers prosecute and police investigate. I do not believe, given the fact

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that all the materials I want and need for prosecution exist, that I should therefore be put in the position of having to "re-invent the wheel."

- The position of the Attorney-General so complicates the issue so as to make this prosecution untenable.
- In my opinion, either a subpoena or a search warrant would be open to a collateral attack and I am mindful of the case involving Mr. J. Bob Carter of Vancouver where there were numerous challenges to the proceedings which resulted in years of litigation.

3. The R.C.M.P. have refused to cooperate. The position of the R.C.M.P. again forces me to "re-invent the wheel." The R.C.M.P. seemed to suggest that they would cooperate with a subpoena, but as I have indicated, the subpoena power in terms of advance preparation is useless, in my opinion.

It is my recommendation, which has been accepted by you, that the charge against Mr. William Reid be withdrawn. You have given me those instructions and I am currently in the process of couriering to the Courthouse in Vancouver, and to counsel for Mr. Reid, a letter indicating that the charge against Mr. Reid is hereby withdrawn.

Let me say in closing that I am dumbfounded at the position taken by the Attorney-General that he, as the senior law enforcement officer of the province, requires a subpoena in this matter. I did not anticipate this position when I agreed to take the private prosecution. I expected the Attorney-General to instruct his officials to provide me the documents freely, as he would have done in any prosecution.

Yours sincerely,

J. M. PETER FIRESTONE

JMPF/jmb

J.M. PETER FIRESTONE, B.A. LL.B.
BARRISTER & SOLICITOR · NOTARY PUBLIC

PENTHOUSE SUITE
620 VIEW STREET
VICTORIA, B.C. V8W 1J6
TELEPHONE: (604) 386-1112

PERSONAL AND CONFIDENTIAL

21st June 1990

BY COURIER

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 86
DATE: Aug 28/90

Moe Sihota, M.L.A.
Esquimalt-Port Renfrew
Room 166
Legislative Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Sihota:

re: Private Prosecution of William Reid

Please find enclosed a draft proposal for Hughes. I have drafted it quickly and I have not really had a chance to review it because I am currently in trial today in Provincial Court, continuing my four-week drug case. I suggest we have a meeting today after court, but I advise you I have another client at 4:45 and I won't be available until 5:30 or thereabouts; or alternatively, we agree to have a meeting either early tomorrow morning or at lunch tomorrow. We can discuss the contents of my proposed response to Hughes, if any.

It is my view that we should respond to Hughes and not simply break off negotiations because it may appear that we were bargaining in bad faith which, of course, is not true. But for appearances sake, a response is probably necessary.

Yours sincerely,

J. M. PETER FIRESTONE

JMPF/jmb
encl:

(Transcribed in the writer's absence.)

J.M. PETER FIRESTONE, B.A., LL.B.
BARRISTER & SOLICITOR · NOTARY PUBLIC

PENTHOUSE SUITE
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TELEPHONE (604) 386-1112

BY COURIER

27th June 1990

PERSONAL AND CONFIDENTIAL

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 87
DATE: Aug 28/90
KH

Moe Sihota, M.L.A.
Esquimalt-Port Renfrew
Room 166
Legislative Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Sihota:

re: Private Prosecution of William Reid

Please find enclosed the following materials:

1. Bound volume entitled, "Requests for Disclosure in the Matter of a Private Prosecution of William Reid."
2. Bound volume entitled, "Responses to Requests for Disclosure in the Matter of a Private Prosecution of William Reid."
3. My letter to you dated the 27th of June 1990 recommending a withdrawal.
4. My letter of June 27th, 1990 to Ted Hughes, indicating our position.
5. My letter of June 27th, 1990 to Court Registry withdrawing the charge.
6. My letter of June 27th, 1990 to Butler, indicating our position.

Let me just say that out of an abundance of caution I think I should go to Vancouver tomorrow and make sure that the withdrawal has been accepted. What I would do is simply talk to the powers that be, and if it has not been "accepted" and removed from the list, then I would have it called unilaterally in Courtroom 306 and have it withdrawn at that time. I am afraid that Butler might argue in the

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end of the day that a letter to the Registry is not effective withdrawal and I want to be able to hold him off from having a forum on the 17th of July.

As far as I am concerned, you can disclose whatever materials in the file that you wish. In my view, to support your position you probably should disclose to the press the requests for disclosure and the responses so that they actually have the texts, but the decision to do that is entirely up to you.

Let me just say I appreciated the retainer and I hope I have been good counsel to you.

Yours sincerely,

J. M. PETER FIRESTONE

JMPF/jmb
encl:

J.M. PETER FIRESTONE, B.A., LL.B.
BARRISTER & SOLICITOR · NOTARY PUBLIC

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TELEPHONE (604) 386-1112

BY COURIER

27th June 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 88
DATE: Aug 28/90

Moe Sihota, M.L.A.
Esquimalt-Port Renfrew
Room 166
Legislative Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Sihota:

re: Private Prosecution of William Reid

I was retained by you as the Informant in the abovecaptioned matter on the 11th of June 1990. I agreed to take the retainer and prosecute Mr. Reid based on the materials provided to the Justice of the Peace, and because in my opinion in this case there existed reasonable and probable grounds to believe an offence has been committed, and there was most certainly an issue to be tried in this case.

As you know, as a private prosecutor, I have attempted to attain disclosure of the relevant materials necessary to prosecute this case, which are currently in the possession of the Attorney-General and his ministry. In the days following my retainer, I FAX'ed a series of requests for disclosure of materials to the various individuals who I believed had the relevant materials. To date, I regret to inform you that my requests for cooperation in this matter have been rejected by all those who are in possession of relevant documents which are crucial to this prosecution.

I attach with this letter a bound volume containing all my requests for disclosure of the relevant materials, which include but are not limited to the Report to Crown Counsel prepared by Inspector Ernie MacAulay, the original exhibits tendered at the special inquiry by the Comptroller-General, and the transcripts of the evidence led at that special inquiry. I have also attached with this letter a bound volume containing all the negative responses which I have received to my various requests.

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Given the failure of the Attorney-General and his ministry to voluntarily provide the necessary materials to me, I must now advise you to withdraw this prosecution against William Reid, M.L.A.

In correspondence with the Deputy Attorney-General of British Columbia, it was suggested that I would be provided these materials only if I were to subpoena them. It is my firm position and legal opinion that such a subpoena is not required in this case. I expected, when I took over this prosecution as a private prosecutor, that the definition of "prosecutor" in the Criminal Code would suffice. The Attorney-General of British Columbia has a recognized duty to supervise all prosecutions. I expected that the Attorney-General of British Columbia would turn over the materials to me as he would to any other prosecutor of any other criminal case. This has not happened.

I see no legal impediment to the Attorney-General and his ministry simply providing the documents to me, as I have requested. There is no need, in my opinion, for me as a private prosecutor to have to go through the circuitous route of obtaining a subpoena.

It is my view that the private prosecution against Mr. Reid should be withdrawn for the following reasons:

1. The Attorney-General and his ministry will only hand over the documents and relevant materials to me in answer to a subpoena. I am of the legal opinion that I am unable to get a subpoena to simply produce documents in advance of a hearing or trial date. In other words, the subpoena power in the Criminal Code is useless to me as a private prosecutor because there is no power in the Criminal Code for a judge of the Provincial Court, or a Justice of the Peace, to order production of documents, short of ordering witnesses to testify at a trial or preliminary inquiry. The subpoena power does not in law therefore give me the opportunity to do any advance preparation in advance of the trial or preliminary inquiry date. This, of course, is untenable in terms of an ongoing prosecution.

2. The Attorney-General of British Columbia has gone on record, since the laying of the private Information by

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you, repeating that his advisors indicate that there is no substantial likelihood of conviction. In my opinion, these comments by the Attorney-General after charges have been laid gives the appearance that the Attorney-General has sided with Mr. Reid, thereby prejudicing the fairness of the private prosecution.

3. While it is open for me to obtain search warrants as a private citizen, in my opinion such a procedure is unnecessary for the reasons I have stated above.

4. If I were to obtain a subpoena, or alternatively a search warrant, both these methods in my opinion are open to collateral attack by the accused and over-complicate the process. It is my experience as an ad hoc Crown prosecutor that prosecutors are regularly handed the R.C.M.P. brief and relevant materials to prosecute a case. Given my interpretation of Section 2 of the Criminal Code where the definition of "prosecutor" is contained, I see no legal impediment which would require the Attorney-General to mandate a subpoena or a search warrant be obtained before voluntarily surrendering the materials to me.

5. Without the cooperation of the Attorney-General and his ministry, my job as a private prosecutor is impossible. The roadblocks placed in front of me which prevent me to access the relevant materials, constitute a serious impediment to this prosecution and were not expected by me when I took the retainer and agreed to act on your behalf.

6. The Royal Canadian Mounted Police have also refused to cooperate. The position of the Royal Canadian Mounted Police again forces me to "reinvent the wheel" and redo the investigation. It has always been my view that as a prosecutor I should prosecute and I should not have to act as an investigator in these matters, especially when all the work has already been done, although not disclosed to me as a private prosecutor.

In conclusion, it is quite clear from the materials available to me that the requisite legal standard of reasonable and probable grounds has been met in this case and, of course, has been confirmed by the R.C.M.P. position. However, to date none of the relevant documents or materials utilized by the Attorney-General's ministry in analyzing

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this prosecution have been disclosed to me. Given the roadblocks placed in front of me, and given the fact that a subpoena or search warrant would be subject to potential collateral attack by the accused, it is my opinion that this prosecution simply cannot continue. Out of a sense of fairness to the accused, if as it appears I am unable to continue, the only fair thing to do in the circumstances is to recommend a withdrawal of the charges.

It is my recommendation, which has been accepted by you, that the charge against Mr. William Reid be withdrawn. You have already given me those instructions and I am currently in the process of couriering to the Courthouse in Vancouver, and to counsel for Mr. Reid, a letter indicating that the charge against Mr. Reid is hereby withdrawn and that he does not have to appear on the 17th of July as originally scheduled.

Yours sincerely,

J. M. PETER FIRESTONE

JMPF/jmb
encl:

J.M. PETER FIRESTONE, B.A., LL.B.
BARRISTER & SOLICITOR · NOTARY PUBLIC

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620 VIEW STREET
VICTORIA, B.C. V8W 1J6
TELEPHONE (604) 386-1112

BY COURIER

11th July 1990

DISCRÉTION TO
PROSECUTE INQUIRY
EXHIBIT # 89
DATE: Aug 28/90
KH

Moe Sihota, M.L.A.
Esquimalt-Port Renfrew
Room 166, Legislative Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Sihota:

re: Private Prosecution of William Reid, M.L.A.
Information Number 23007-D

Please find enclosed copies of the following:

1. My letter of June 27th, 1990 to the Provincial Court of British Columbia;
2. My letter of June 27th, 1990 to Peter Butler, Q.C., counsel for William Reid;
3. My letter of June 28th, 1990 to Mr. Prasad, Provincial Court Trial Co-ordinator;
4. Memorandum to file dated June 28th, 1990;
5. Memorandum to file dated June 29th, 1990.

It is my understanding that the private Information against Mr. Reid has been withdrawn. It is my understanding that the matter was put before Judge Libby, who is an administrative judge in Vancouver, and the withdrawal is effective.

I have confirmed with the Provincial Court that they received my FAX'ed letter on the 27th of June 1990 at approximately 2:50 p.m. It is my understanding that the letter was then put on the file and the matter was taken off the list for the 17th of July 1990 at 9:30 a.m. in Vancouver. I wrote by separate covering letter to counsel for Mr. Reid indicating that he no longer need appear on the 17th of July 1990.

In summary, therefore, it is my opinion this matter has been withdrawn and is no longer before the courts in Vancouver.

Yours sincerely,

J. M. PETER FIRESTONE

POLICE FILE NUMBER
NUMÉRO DE PROCÈS-VERBAL

CANADA: PROVINCE OF BRITISH COLUMBIA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

This is the information of Manmohan Singh Sihota, a Barrister and Solicitor of the City of Victoria, Province of British Columbia (the "informant")

Les presentes constituent la denonciation de

(de "denonciateur") de

The informant says that he has reasonable and probable grounds to believe and does believe that/Le denonciateur declare qu'il a des motifs raisonnables et probables de croire et croit effectivement que

WILLIAM E. REID

at or near the City of Victoria and elsewhere in the Province of British Columbia between the 7th day of September A.D. 1988 and the 22nd day of September A.D. 1989 did, being an official, unlawfully commit a breach of trust in connection with the duties of his office, namely as a Minister of the Crown in Right of the Province of British Columbia, to wit: requisitioning payment out of the lottery fund in the Provincial Treasury, of monies in excess of Two Hundred Thousand ($2000,000.00) Dollars and petitioning the British Columbia Purchasing Commission, for purposes of assisting the personal business interests of George Doman, William Sullivan and Eco-Clean Waste Systems Ltd., contrary to Section 122 of the Criminal Code of Canada

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 90
DATE: Aug 29/90
KRH

SWORN BEFORE ME/ASSERMENTÉ DEVANT MOI

ON/LE May 18 19 90

(Signature of Informant/Signature du dénonciateu

AT/À Vancouver
British Columbia/Colombie-Britannique

A Justice of the Peace in and for the Province of British Columbia
Juge de paix dans et pour la province de la Colombie-Britannique

PROCESS/ACTE DE PROCÉDURE

CONFIRMED/CONFIRM

A Justice of the Peace in and for the Province of British Columbia
Juge de paix dans et pour la province de la Colombie-Britannique

CROWN COUNSEL/AVOCATE-CONSEIL DE LA COURONNE

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 91
DATE: Aug 29/90

CRIMINAL LAW & PROCEDURE

General Principles

The Justice Reform Committee heard from many people who are concerned about the criminal law and the way our courts handle criminal cases.

There were valid criticisms and creative suggestions from people who are well-informed about the criminal justice system. Other submissions reflected a fundamental misunderstanding of the true role of our criminal law. They represented some popular notions about the criminal law - that 'most accused go free'; 'criminals on parole regularly reoffend'; and 'the consequences of crime are not significant'.

Those familiar with the criminal justice system know that these notions are false. Full acquittals are not easily won. Most parolees do not reoffend. And Canada puts more of its people in prison, per capita, than any country in the western world except the United States.

Public education must be a priority for government and for the legal profession if the criminal justice system is to enjoy a high degree of public confidence.

On the whole, however, the Committee has been left with an impression of a criminal justice system that is working remarkably well. This Province enjoys a corps of Crown Counsel, criminal defence lawyers and police who are skilled, hard-working and professional. The judges hearing criminal cases are better qualified for their work than ever in the past. And large volumes of cases are processed with very little delay.

FEDERAL AND PROVINCIAL AREAS OF RESPONSIBILITY

Criminal law and criminal procedure are within the jurisdiction (authority) of the Federal government. The provinces cannot make or change criminal law but they do have authority over the administration of justice. This includes the organization of the Provincial Courts.

Many submissions to the Committee concerned areas of the law which the Province cannot deal with. Sentencing practices are a good example.

This report will limit itself for the most part, after a brief discussion of principles, to those issues that are within the area of provincial authority. The substantive criminal law is outside that realm. Also, many areas of the criminal law are the subject of major studies now under way by the federal Department of Justice, the Law Reform Commission of Canada, and the Canadian Bar Association and this Committee will not attempt to duplicate that work in any way.

BASIC PRINCIPLES

A discussion of all the complexities of the criminal law is far beyond the scope of this report. However, an understanding of some fundamental principles is essential to any thoughtful examination of the criminal justice system.

These principles are:

- the presumption of innocence;
- reasonable doubt;
- strict application of the rules of evidence and procedure;
- the confession rule; and
- the *Charter of Rights*

THE PRESUMPTION OF INNOCENCE

In criminal cases, it is the Crown prosecutor who must prove that the accused is guilty. If the Crown cannot prove it, the accused must go free. In other words, the 'onus of proof' is on the Crown.

Closely tied to this is the rule that an accused person cannot be required to give evidence. This is referred to as the 'non-compellability of the accused'. No other branch of the law protects one party to an action in this way. The Crown must prove its case and it may not require the accused to give an explanation.

REASONABLE DOUBT

This is the *standard* of proof that the Crown must meet in criminal cases. Guilt must be proven beyond a reasonable doubt. By contrast, in civil cases, the case must be proved 'on a balance of probabilities'.

It is difficult to describe exactly what proof beyond a reasonable doubt means. It is something less than absolute certainty but it has been equated with moral certainty. The standard of reasonable doubt is an important safeguard to the individual charged with a crime.

THE STRICT APPLICATION OF RULES OF EVIDENCE AND PROCEDURE

Because conviction of a crime is an extremely serious matter, our criminal justice system insists on strict compliance to rules of evidence and procedure. Some of these are easily misunderstood by the public as tending to let the guilty go free. An example is the rule against hearsay. In our everyday lives we regularly rely on second-hand information. But in a criminal court, evidence of what someone else who is not in the courtroom has said, is not allowed (with certain exceptions) simply because it is not reliable.

THE CONFESSION RULE

This is another rule which is often misunderstood. Sometimes a person accused of a crime will have made a confession to, say, a police officer. Yet the judge refuses to allow that confession in as evidence. The reason is that a statement is only admissible if the Crown can prove that it was made voluntarily.

Statements made under promise of favour or threat of physical harm, for example, might not be true. People will tend to say whatever they feel will get them out of an uncomfortable situation. And we do not want our police officers to resort to such methods to obtain confessions.

CHARTER OF RIGHTS

The Canadian *Charter of Rights* firmly entrenches in our Constitution certain rights which before 1982 existed at common law or under statute. The protections that the Charter guarantees to those accused of crime reflect historical efforts to offset the much greater power of the state.

Some people who spoke to the Committee felt that the notion of rights for 'criminals' is offensive. But there are no 'criminals rights' or 'victims rights' - they are the rights of all. The extent to which a society protects and furthers the rights of each one of its members is the final measure of the vitality of the democratic system.

The Crown Counsel Office

GENERAL

The criminal defence lawyers and Crown Counsel of British Columbia have a tradition of camaraderie and free exchange of ideas and information which we believe is not enjoyed to the same extent elsewhere. These traditions and relationships must be maintained.

The independence of the Bar is another cornerstone of our justice system. The Law Society said in its brief to the Committee:

> *(I)n the context of the criminal law, this includes the maintenance of a capable, vigilant, informed and courageous criminal defence bar. It also refers to the maintenance of a professional corps of prosecutors with a strong sense of public duty befitting such position.*

Continuing Legal Education which enhances legal skills among the practising criminal bar is essential.

FUNCTIONS OF CROWN COUNSEL

Crown Counsel in this Province carry out many functions. They prosecute cases at all levels of Court. They decide which charges, brought forward by the police, will be prosecuted. They deal with members of the public and the media, and they perform a host of administrative duties. Some Crown Counsel prosecute a wide range of cases while others specialize in areas such as commercial crime or child sexual abuse.

STRUCTURE OF THE CROWN COUNSEL OFFICE

TERMS OF EMPLOYMENT

The work of Crown Counsel in this Province is divided among three distinct groups

- permanent staff;
- contract prosecutors; and
- ad hoc prosecutors.

The permanent staff are those people who have made and expect to continue to make the job of Crown Counsel a career. Those who act as Crown Counsel on a contract basis may continue to do so over a period of years, but they have no reasonable expectation that their contracts will be renewed indefinitely. The third group are members of the private bar undertaking Crown work for an hourly or daily rate.

The Committee heard from various sources that Crown offices typically are short of support staff and normal office equipment. They do not have the resources available to the average law firm.

SPECIAL UNITS

Recent years have seen the creation in Vancouver of specialized units within the Crown Counsel office. Examples are the Criminal Appeals and Special Prosecutions Offices and the Commercial Crime Division. These three special branches of provincial prosecution should be supported. They represent three distinct areas requiring high levels of skill and knowledge, particularly in view of the complexity of the law since enactment of the *Charter of Rights*.

AD HOC CROWN COUNSEL

In the 1970s ad hoc work was generally restricted to jury trials and special prosecutions. Typically, the Crown hired senior members of the defence bar to prosecute a full assize - four or five major criminal trials. For each case, a junior would be assigned from the Crown office.This system allowed the private bar to participate in Crown work and gave junior prosecutors the chance to learn from senior counsel.

Today, Crown Counsel rarely assigns junior prosecutors to work with ad hoc counsel. Cases are parcelled out at all levels to members of the private bar. The system breaks down when lawyers are called in with very little time for preparation to prosecute whatever cases are set for hearing in a given courtroom.

A healthy criminal bar is one in which the participants are familiar with the handling of cases on both sides. Unquestionably there is a place for ad hoc work in any Crown Counsel office, if properly administered.

CROWN COUNSEL INTERCHANGE PROGRAM

If it is important for members of the private bar to prosecute cases in order to promote understanding within the system, it is equally important that Crown Counsel have the opportunity to work on the defence side. In 1986, the Ministry of the Attorney General established the Crown Counsel Interchange Program with this opportunity as its goal. Under the program, Crown Counsel are occasionally permitted to work with a senior defence lawyer on a trial of limited duration. To date, a healthy number of Crown Counsel have taken part and their reactions have been positive.

THE PROBLEM

The Committee heard many criticisms of the present state of the Crown Counsel office. None of these were directed at the members of that office themselves. Individual Crown Counsel were almost invariably described as being hard-working and conscientious.

Rather, critics point to a lack of funding resulting in prosecutors being overworked and without the resources to do their jobs properly. Defence lawyers said they have problems preparing their cases when Crown Counsel are too busy to discuss files with them before trial.

Volunteers who work with victims of crime talked about the frustration felt by people drawn into an unfamiliar and intimidating court system when the prosecutor handling the case is too busy to prepare them for trial; or worse, an ad hoc prosecutor who has just received the file that day is unfamiliar with the facts. Victim and witness representatives also described situations in which a succession of prosecutors handle a single file. Victims, even children, have to tell their stories over and over again, each time to a new face.

Members of the public coming in contact with the justice system must be satisfied that it has addressed their needs and concerns.

As methods of crime detection become more sophisticated and criminal lawyers more specialized, there is an ever-increasing need for a skilled and adequately staffed and funded Crown Counsel office. Government must ensure that Crown Counsel can meet the needs and expectations of British Columbians.

THE PROPOSALS

To serve the public effectively, the Crown Counsel office must offer attractive career opportunities to appropriate candidates. The office should operate like any large law firm.

Lawyers should be hired initially on contracts of one to five years. They should have the reasonable expectation that if they meet the standards of the office they will have the opportunity of being retained as permanent staff. At that time they should be offered either a five-year contract or a public service position. Salaries should reflect skill and experience levels.

Junior members of the Crown Counsel staff should be assigned to work on difficult cases with senior prosecutors, whether they be members of the private Bar hired on an ad hoc basis, or staff Crown Counsel.

Adequate support staff, both clerical and paralegal is essential. Using prosecutors to perform clerical or paralegal functions is a false economy and weakens morale. Office technology must be brought up to date. Word processing equipment, adequate tools for reproducing and binding documents, and dictation equipment should be standard.

Once the offices are properly staffed and equipped they will be able to carry out their function in a way that fosters public confidence in the criminal justice system and treats the participants with respect.

RECOMMENDATION 54

Regional Crown Counsel should have budgets that will allow appropriate levels of staffing and equipment for Crown Counsel offices throughout the Province.

RECOMMENDATION 55

Crown Counsel should be hired initially on contracts of from one to five years with merit the sole criteria for continued employment.

RECOMMENDATION 56

A career path should be established within the Crown Counsel office so anyone who has served in the office for five years and met the appropriate standards would be offered either a five year contract or a permanent Public Service position.

RECOMMENDATION 57

Support for the Criminal Appeals and Special Prosecutions Offices and the Commercial Crime Division should be continued and enhanced where required.

RECOMMENDATION 58

A system of ad hoc Crown Counsel should be maintained, with prosecution work at all levels contracted out to the private bar. However, there should be continuity in the handling of individual cases. Ad hoc counsel should not be put in a position where they do not have adequate time to prepare for court.

RECOMMENDATION 59

The Crown Counsel Interchange Program should be encouraged and enhanced.

The Charge Approval Process

BACKGROUND

In British Columbia, once police have investigated a criminal case, Crown Counsel decide whether or not a charge will be laid.

This is not the case everywhere. In England, for example, it is the investigating or arresting police officer who makes the decision. In Ontario also, the police decide what charges should be laid. However, there are many in Ontario who envy our system. The 1987 Report of the Ontario Courts Inquiry says:

> *(T)o a far greater degree, Crown prosecutors should be involved in the determination of what charge is to be laid.*[1]

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[1] *Report of the Ontario Courts Inquiry (The Zuber Report)*, T.G. Zuber, (Ontario Ministry of the Attorney General, 1987) at 227.

When making this determination, the Crown Counsel considers two factors:

- Is there a substantial likelihood of conviction? and
- Is it in the public interest to lay the charge?

THE PROBLEM

The Committee heard from police and citizens groups who believe the police should be the ones to decide what charges to lay. Police are frustrated when prosecutors decide not to lay charges after they have worked hard on an investigation. They also feel that respect for the police is lowered when Crown Counsel 'second guesses' their opinion and decides not to lay a charge.

On the other hand, the determination of what charges should be laid is a difficult and extremely serious matter. For many people, the damage done simply by the laying of a charge is enormous, no matter what the eventual outcome.

The person making that decision must consider the likelihood of conviction in light of the evidence available, the procedural obstacles that may lie in the way, and the constitutional remedies that might be available to the accused, as well as whether it is in the public interest to proceed with the prosecution.

THE PROPOSAL

The person best able to decide what charge should be laid is one who is knowledgeable about criminal law and who is ultimately accountable for the prosecution of the case. That person is the Attorney General or his agent - Crown Counsel.

However the police should have some recourse when they strongly disagree with a decision not to prosecute. The investigating police authority should be able to have that decision reconsidered at a more senior level in the Crown office. This may be seen as a logical step in the charge approval process. It should remain clear, however, that the ultimate decision remains with the Crown and not the police.

RECOMMENDATION 60

The authority to decide what charges will be laid must remain with the Attorney General or his agent - Crown Counsel.

The Committee recommends the following procedure for review of a charge approval decision:

- A Chief Constable or officer in charge of a detachment who disagrees with the decision not to lay a charge may ask Regional Crown Counsel for a review. Regional Crown Counsel may ask for assistance from Senior Crown Counsel - Special Projects, or may obtain an opinion from a member of the private bar. Regional Crown Counsel will decide and advise the police officer.
- An officer who disagrees with that decision may ask the Assistant Deputy Attorney General, Criminal Justice, to review the matter.
- In addition to these procedures, a Chief of Police or the Deputy Commissioner of the RCMP in the Province may appeal a charge approval decision directly to the Deputy Attorney General if the situation is urgent or a matter of significant public interest or public policy.

RECOMMENDATION 61

A Chief Constable or officer in charge of a police detachment who is dissatisfied with a Crown Counsel decision not to lay a charge, should have the right to have that decision reviewed by Regional Crown Counsel and ultimately the Deputy Attorney General.

Pre-trial procedures

THE PRELIMINARY INQUIRY

BACKGROUND

Everyone accused of a crime makes a first court appearance in Provincial Court. Most cases are dealt with entirely in that court, but certain offences - generally the more serious ones - give an accused the right to a trial in a higher court, and some must be tried there.

If a case is going to a higher court, normally the first step is a

Preliminary Inquiry in the Provincial Court. This Preliminary Inquiry serves several purposes:

- It 'weeds out' the cases that do not merit a trial.
- It gives defence counsel a chance to size up the Crown's case.
- It allows the Crown to test its own case and in some cases to see the nature of the defence that is likely to be pursued at trial.
- It can help to prepare the witnesses for trial.

At the Preliminary Inquiry the Crown calls evidence and the defence may cross-examine. The defence may also call evidence but seldom does. When the hearing is finished, the Provincial Court Judge must decide whether there is any evidence on which a jury, properly instructed by a judge, could convict the accused. If so, the accused is ordered to stand trial.

This is quite a low standard of proof, so almost every Preliminary Inquiry results in a committal for trial.

THE PROBLEM

The Provincial Court Judges call the Preliminary Inquiry a 'colossal waste of time'. They believe that it no longer fulfills its original purpose - that of weeding out cases that do not merit a trial. Other submissions on this subject favoured retaining the Preliminary Inquiry but fine tuning it to make it more efficient.

THE PROPOSAL

Preliminary Inquiries are a safeguard against an accused person being unnecessarily exposed to a public trial. This is true even though an accused rarely is discharged after a preliminary.

A Preliminary Inquiry often leads to a guilty plea to the offence charged, or to some lesser charge. This is because after hearing the evidence at the Preliminary Inquiry both accused and Crown are then in a much better position to assess the facts of the case and the credibility of the witnesses. They can then arrive at an appropriate disposition of the case.

And finally, Preliminary Inquiries lead to better trials. Issues are identified and narrowed and areas of agreement can be admitted.

It has been suggested that better pre-trial disclosure of the Crown's case to the defence could replace the Preliminary Inquiry. The Committee does not agree with that view, although it does favour disclosure. Disclosure, which usually means the exchange of statements and other documents, is no substitute for actually seeing the witnesses testify under oath.

For these reasons the Committee believes that the Preliminary Inquiry should be retained.

RECOMMENDATION 62

The Preliminary Inquiry should be retained and efforts made to enhance its efficiency and usefulness.

The pre-trial disclosure model that is described below would, the Committee expects, have that effect.

PRE-TRIAL DISCLOSURE

THE PROBLEM

Fairness and efficiency in the administration of the criminal justice system depend largely on the quality of the information made available to people who are accused of crime. Crown Counsel has a duty to disclose the prosecution's case and make the defence aware of all relevant evidence. A possible exception would be in situations where that disclosure would put someone's personal safety at risk.

This duty is a reflection of the true role of the prosecution under our system of justice. The prosecutor's role is not to obtain a conviction. Rather, it is to see that justice is done through a fair trial on the merits: it is to put before the court all the available relevant evidence, whether it would tend to prove guilt or innocence.

The current policy of the Attorney General of British Columbia is to provide full disclosure to the defence. This policy is followed in general by Crown offices in all parts of the Province, although there do seem to be some who take a more restricted view of the duty to disclose.

Even when there is a willingness to disclose, the pressures of practice on both sides are such that counsel most often do not sit down together early on and discuss the handling of a case. Often it is only on the day of trial, or preliminary, when all the witnesses are gathered in the courtroom, that counsel get down to deciding which witnesses are really necessary or which issues are not really in dispute.

The result is that a great many trials and preliminaries take much longer than they ought to and many members of the public are inconvenienced. Further, a tremendous burden is placed on municipalities who must pay their police officers to attend court unnecessarily. In Vancouver alone, the cost of police overtime in cases where they were not called to give evidence was $1,200,000 for 1987.

THE MONTREAL MODEL

In the mid 1970s several experimental projects were undertaken in Canada to test the possibility of establishing pre-trial disclosure as standard practice.

In Montreal the procedure consisted of two stages: a disclosure conference between Crown and defence counsel; then a hearing before a judge. The hearing is a new step in the process, between the accused's first appearance and the Preliminary Inquiry.

What began in Montreal in 1975 as a temporary project has become a well-established feature of the criminal justice system there. The procedure has reduced most preliminary hearings to only two or three witnesses - a significant time saving. It has also increased the number of guilty pleas. Those trials that do go ahead are shorter because of the admissions that are obtained at the disclosure stage.

THE PROPOSAL

The Committee proposes Vancouver as a logical testing ground for a similar project in British Columbia.

The Provincial Court at Vancouver handles by far the largest volume of criminal cases of any Provincial Court in the Province. Few, if any, physical alterations to the building would be needed to accommodate the project. The major requirement for the success of the project is the availability of experienced prosecutors.

Because the system would be voluntary it would also require a spirit of cooperation among the judges, Crown and defence lawyers. This climate of cooperation and goodwill already exists in Vancouver. This is how the system would work.

At the first court appearance by the accused and counsel, a date would be set for a pre-trial hearing. This date should be within the next week or two and the courtroom would be called Disclosure Court.

On the day of the pre-trial hearing the defence lawyer and Crown Counsel would get together in a meeting room at the courthouse.

Crown Counsel would make sure at that time that the defence had been given all the relevant information about the Crown's case.

Once full disclosure has been made, the lawyers could discuss the possibilities open to them, from a stay of proceedings to a guilty plea, either to the charges as laid or to some lesser charges. The defence might decide to waive the Preliminary Inquiry. Or they might discuss ways to streamline the preliminary or the trial, either by admissions of fact or narrowing the issues. The witnesses who will be required at the next stage could be agreed upon.

When the discussion is concluded a clerk will take the file to the Disclosure Court and the lawyers will await their turn.

At the Disclosure Court hearing, the defence could:

- request a Preliminary Inquiry;
- waive the Preliminary Inquiry, with the consent of the Crown;
- ask for a partial Preliminary Inquiry by agreeing to waive the rest of the inquiry after one or more named witnesses have been heard;
- make certain admissions;
- enter a guilty plea;
- ask for an adjournment, either to consider a guilty plea or to complete disclosure.

If the defence asked for a Preliminary Inquiry, the judge would invite both sides to identify and limit the issues. Finally, both sides would give their estimates of how long the next stage should take, whether it be a trial or preliminary.

For this procedure to be effective, it must be taken seriously by Crown and defence counsel. Juniors and articling students must not be used for this procedure as they are for setting trial dates. Lawyers on both sides must have full authority to make admissions and to discuss the appropriate charge or charges. Lawyers' conferences should begin at 9:00 a.m. and Disclosure Court at 10:00 a.m.

It does not seem that extra judges would be needed for this experiment but that may require further review. More clerks likely would be needed however. In most courtrooms the functions of court clerk and court recorder have been merged into one job. But with several Crown Counsel operating out of Disclosure Court at any one time, additional clerks could be needed to keep the system moving. A full-time court co-coordinator would likely be necessary as well.

Extra staff costs would be more than offset by savings in shorter Preliminary Inquiries and trials and fewer of them. Savings in police overtime and expense and inconvenience to the public should be substantial.

If successful, the experiment could be implemented in stages throughout the Province.

RECOMMENDATION 63

The pre-trial disclosure model described above should be instituted on an experimental basis at the Provincial Courthouse at 222 Main Street, Vancouver.

RECOMMENDATION 64

Government should make available the funding and staff necessary to make the model work.

RECOMMENDATION 65

A Committee of Provincial Court Judges, Crown Counsel and members of the defence Bar should be established to coordinate, implement and oversee the experiment for a two-year period.

RECOMMENDATION 66

This Committee should hold a series of meetings to explain the proposal to the criminal bar and to encourage full participation and cooperation.

RECOMMENDATION 67

If successful, the model should be implemented in stages, Province-wide.

RECOMMENDATION 68

The Legal Services Society must recognize the value of these pre-trial procedures by creating an appropriate Legal Aid tariff item.

THE SCOPE OF THE DUTY TO DISCLOSE

The duty of the Crown to disclose the prosecution's case to the accused has already been discussed. It has also been stated that the current policy of the Ministry of the Attorney General is to provide full disclosure to the defence, and that policy is generally followed.

Questions arise when there is disagreement over what exactly is meant by 'full disclosure'. How specific must the Crown be? Is the defence entitled to all aspects of the investigation? Or is it only entitled to those aspects relevant to the facts and matters in issue? If so, who decides what is relevant?

The Committee believes that more specific guidelines should be implemented.

It must always be remembered that the prosecution of a person charged with an offence is not a game. The burden of proof rests with the Crown. If the Crown has evidence which tends to cast doubt on any of its assertions, these must be disclosed to the defence.

RECOMMENDATION 69

The Ministry of the Attorney General should continue its policy of providing to the defence its theory or alternate theories with respect to the commission of the crime, as well as complete disclosure of the evidence which the Crown intends to call at trial.

This disclosure should include the following:

- A narrative of the facts or circumstances;
- A list of witnesses to be called except where there is an honest belief that such information could put someone's personal safety at risk;
- Witness statements;
- Statements made by the accused to people in authority;
- Statements made by the accused to others if those statements are to be used in evidence;
- All statements made by other people who are charged with offences arising out of the same circumstances, if they are relevant to the offence;
- Descriptions of any physical evidence on which the Crown intends to rely;
- Any prior criminal record of the accused;
- Criminal records of Crown witnesses, if requested by the accused;
- Copies of all books, papers and photographs which the Crown intends to produce at trial (copies of tape recordings must be made available to the accused);
- All intercepted communications where ordered by a Judge as particulars under s. 178.17 of the *Criminal Code*;[3]
- Search warrants in support of evidence to be used at trial and copies of the Informations of Belief sworn in support of the applications for the search warrants;
- Any authorizations on which the Crown intends to rely for the purposes of the admissibility of intercepted private communications;
- All expert reports on which the Crown intends to rely at trial and any contradictory reports that were obtained by the Crown or police during the investigation;
- If a motor vehicle accident was involved, any motor vehicle accident reports filed;
- Notice of any intention by the Crown to introduce similar fact evidence; accomplice evidence; line-up evidence; or informal out-of-court line-up identification of the accused.

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[3] R.S.C. 1970, c.C-34.

PRE-TRIAL MOTIONS

THE PROBLEM

In civil cases, pre-trial applications (motions) are common. There are courtrooms set aside for them every day and the forms and procedures are familiar. But in criminal cases there is no standard procedure. The *Criminal Code* refers to several applications which can be brought before trial but does not say how or when that should be done.

The result is that witnesses and jurors are often inconvenienced by having to wait around while these matters are dealt with before a trial begins. The following proposals and recommendations are made with a view to alleviating that unsatisfactory situation.

THE PROPOSAL

As was said at the beginning of this section, criminal procedure is a matter for the federal government; but s. 438 of the *Criminal Code* does give the judges of the courts of the Province certain authority to make rules of practice and procedure. The effect of this *Criminal Code* section, together with provisions of the *Provincial Court Act*, the *County Court Act*, and the *Supreme Court Act* is to give the judges the authority they need to create rules to deal with pre-trial motions.

The following applications are among those that should be brought at the pre-trial conference stage or in any event before the day of trial:

- for a severance of counts;
- to quash an indictment, charge or information;
- for a change of venue; and
- for a declaration of abuse of process, or an argument respecting delay, under the *Charter of Rights*.

The following is a draft set of rules for handling pre-trial motions which could be considered:

(1) Prior to the scheduled trial date the following motions may be brought before any Judge of the Court where the trial is to be held, whether that be in Provincial Court or in a higher court:

(a) to sever the accused or the counts, or both;
(b) to quash the indictment, charge or information;

(c) to suppress evidence under the *Charter of Rights and Freedoms;*
(d) for a change of venue; or
(e) to suppress wiretap evidence.

(2) Any motion in this part may be heard by a court at a scheduled pre-trial hearing in accordance with s.553.1 of the *Criminal Code*.

Based on ss. 602, 603 and 604 of the Criminal Code, neither side has the right to appeal the result of any of these motions. The right to appeal a ruling on a motion does not arise until after the accused has been convicted or acquitted at trial.

Any motion under 1(c) would require notice pursuant to the *Constitutional Questions Act*.

Another set of rules should be created to deal with motions to suppress electronic evidence. The following draft is offered for consideration:

(1) Tne Crown must notify the accused and the Court, at least one month before trial, that it intends to offer as evidence communications intercepted pursuant to an Authorization.

(2) Motions to open sealed packets pursuant to s. 178.14 of the *Criminal Code* or to set aside Authorizations or renewals may be brought before a Judge of the Supreme or County Court.

(3) Motions to open sealed packets[4] to set aside Authorizations or renewals shall be made at least seven days before trial. No such motion may be made within seven days of the trial date, unless the trial judge in his or her discretion agrees to hear it.

(4) Motions to open sealed packets or to set aside Authorizations or renewals may be heard by a Court at a pre-trial hearing or, in the case of a jury trial, in accordance with s.574(5) of the *Criminal Code*.

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[4] Sealed packets contain materials offered in support of applications for authorization to intercept private communications.

(5) After hearing the motion, the Court shall make its ruling forthwith, unless the Court in its discretion and on reasonable grounds decides to reserve its decision.

This draft rule does not provide for an appeal. It is suggested that s. 605(1) of the *Criminal Code* be amended to give the Crown the right to appeal an order setting aside an Authorization.

RECOMMENDATION 70

A committee of Judges of the Supreme and County Courts, Crown Counsel, and members of the defence bar should be established to create a set of rules for pre-trial motions in the superior courts.

RECOMMENDATION 71

A committee of Judges of the Provincial Court, Crown Counsel, and members of the defence Bar should be established to create a set of rules for pre-trial motions in the Provincial Courts.

RECOMMENDATION 72

Counsel should be encouraged to make pre-trial motions before the date set for trial, and as early as possible.

RECOMMENDATION 73

The Legal Aid tariff should be amended to compensate counsel for bringing motions prior to the trial date.

An Expanded Role for the Provincial Court

THE PROBLEM

The Provincial Court Judges told the Committee that they feel their Court could better contribute to the administration of justice if it were given an expanded role.

Part XVI of the *Criminal Code* says that in most cases, a person who is charged with an indictable offence (one of the more serious offences) can choose to have a trial before a judge without a jury. This option was once referred to as a 'speedy trial'. In British Columbia the result is a trial in the Supreme or County Court.

THE PROPOSAL

The Provincial Court Judges believe, and the Committee agrees, that in British Columbia, the Provincial Court should also be authorized to conduct these 'judge alone' trials of indictable offences.

The system of sending these cases to County or Supreme Court originated in the days when the Provincial Court Judges (then Magistrates) were not legally trained.

The term 'speedy trial' by now is a misnomer. Trials could take place much more quickly and efficiently in Provincial Court where more than 90% of all criminal cases are already being heard. The additional workload in the Provincial Court should be offset by efficiency gains if the pre-trial disclosure model is implemented.

The option of having a trial in the same Court where the Preliminary Inquiry was heard (but before a different Judge) is available in Quebec.

RECOMMENDATION 74

Section 482 of the *Criminal Code* should be expanded to include Provincial Court Judges for the purposes of judge alone trials.

RECOMMENDATION 75

Section 464 of the *Criminal Code* should be amended to allow an accused to choose trial by a Provincial Court Judge without a jury after having a Preliminary Inquiry.

RECOMMENDATION 76

The accused should still have the option of choosing a judge alone trial in a higher court.

Witnesses and Victims

WITNESSES

THE PROBLEM

Witnesses are an essential part of the criminal justice system and they deserve to be properly treated. Yet many submissions to the Committee painted a sorry picture. Witnesses often have to wait for a long time in overcrowded offices or hallways, sometimes in the presence of the accused. They are subpoenaed to court, sometimes at cost and inconvenience to themselves, only to be told that they are no longer required, or that they will have to come back another time.

The result is that these people are frustrated and angry with the justice system that treats them with so little respect. The time of police witnesses is very often wasted as well and their employers bear a very heavy cost.

THE PROPOSAL

The Committee believes that implementation of the Montreal Model described above will help to ensure that only those witnesses who are essential to the case will be called to testify. It should also reduce the number of last minute adjournments that cause witnesses so much inconvenience.

Ideally, Crown Counsel should interview witnesses well before any hearing. At that time, the nature of the case and the witness' role should be explained carefully. The witness should be given a general understanding of what to expect in court. Unfortunately, the pressures of time mean that this does not always happen. It may be that other recommendations in this report will result in Crown Counsel having more time to spend with witnesses.

Perhaps better use could be made of their available time if a videotape presentation were used to familiarize witnesses with the criminal justice system generally: the layout of the courtroom, the functions of the various people in the courtroom, and the nature of the trial itself.

The Committee was told that witnesses who are subpoenaed to court are often confused and intimidated when they arrive at the courthouse and find no clear indication as to where they should report or what they should do. A sign at the entrance to each courthouse, offering clear instructions to witnesses would be a simple and inexpensive first step toward better communication with these important players in the justice system.

RECOMMENDATION 77

Crown Counsel should be allowed the time to meet the reasonable needs and concerns of witnesses.

RECOMMENDATION 78

Enhanced witness management and notification programs should be put in place and maintained.

RECOMMENDATION 79

The Ministry of the Attorney General should produce a videotape which can be used by Crown Counsel to familiarize witnesses with the criminal justice system and the trial process.

VICTIMS

THE PROBLEM

All of the comments made with respect to Witnesses apply as well to victims of crime. The victim will almost always be one of the witnesses for the Crown, but the victim has other concerns as well. He or she may have been injured or suffered financial loss as a result of the crime. If there has been a death, and even sometimes when there has not, the victim's family are victims of crime as well.

For most victims of crime, information about their case is their primary need. For a smaller but significant group of victims who have suffered violence and trauma, special support services are needed.

SERVICES OFFERED

Since 1981 the Ministry of the Attorney General has been addressing the various issues relating to the needs of victims and witnesses in a coordinated way. A good example is the Ministry's program for dealing with sexual abuse of children. Prosecutions are conducted by specially trained Crown Counsel who are skilled at interviewing children and the appropriate expert witnesses.

These prosecutors regularly participate in local Committees made up of professionals involved in child sexual abuse issues. In this way, prosecutors can educate social workers, doctors, psychologists, mental health workers and police. At the same time, these professionals educate the prosecutors about other aspects of child abuse.

In June 1988 the *Victims Rights and Services Act* was passed. This gives victims basic rights to information and permits judges to impose a surcharge on certain offences to provide funding for services to victims. The federal government has passed a similar law.

In the current fiscal year, $2.15 million has been earmarked by the Provincial government for services to victims of crime and witnesses and the same amount is contemplated for the next year. These services include crisis intervention, court preparation, and emotional and practical support during the court process and referral to continuing counselling. Services are provided through police detachments, community agencies, probation and Crown Counsel offices.

About two years ago the Criminal Justice Branch of the Ministry developed a program for the submission of victim impact statements at sentencing hearings. This is the statement in which victims may express to the Court at the time of sentencing the impact that the offender's actions have had on their lives. The federal government has followed with a similar procedure to be used across the country.

Very recently, the federal government has passed a law which gives judges the authority to order convicted criminals to make restitution to their victims. However, because most criminals do not have any money, such orders are likely to be worthless in most cases.

Also, the Committee opposes any trend toward converting the criminal justice system into a means by which individuals can pursue their claims against wrongdoers. That is what the civil justice system is for.

PROPOSAL

What is required to address the needs of victims is a broader initiative. In British Columbia, the *Criminal Injuries Compensation Act* addresses the problem in a modest way. Perhaps a federal-provincial program expanding both the coverage and the amount of compensation to victims should be considered. Some funding possibly could come from seized proceeds of crime. If society is genuinely interested in seeing that victims of crime are compensated for their losses, it must be in this fashion.

RECOMMENDATION 80

The provision of victim and witness services at police detachments, community agencies, probation and Crown Counsel offices should be continued.

RECOMMENDATION 81

The *Criminal Injuries Compensation Act* should be reviewed and consideration given to increasing the compensation available and broadening the coverage of the Act.

WIFE ASSAULT

Assaulted wives are victims of crime and so the remarks in the Chapter above apply equally to them; but their situation gives rise to its own unique problems as well.

The Crown's policy is to proceed with a criminal prosecution wherever there is evidence to support a case. As in any other type of crime, police usually lay the information (charge) rather than insisting that the wife do it. The intention of this policy is to send a message to the public that spousal assault is a crime against society, and not merely against the individual spouse.

These situations are difficult. The assaultive behaviour needs to be stopped but at the same time the family relationships have to be considered. The Crown tries to deal with these issues by proceeding with prosecution but encouraging imaginative sentencing. For example, counselling might be appropriate if the batterer is the family's main supporter and rehabilitation and reconciliation are possible.

In spite of the many policies and initiatives that have been implemented, several groups who deal with victims of wife assault across the Province expressed serious concerns that wife assault is still not being treated as a serious offence.

These groups feel that police must intervene more directly in individual cases to protect victims and arrest offenders. They applaud the Crown's spouse assault policy but say it is not applied consistently throughout the Province. They support court-ordered programs for men who assault their wives.

RECOMMENDATION 82

A strong message must be sent to the public that wife assault is as serious an offence against society as is assault of a stranger.

The Committee recognizes that efforts have been made by police and the Crown in recent years to address this serious problem and encourages continuation and enhancement of these initiatives.

Diversion

BACKGROUND

'Diversion' is the name given to programs which offer an alternative to prosecution under certain circumstances. Instead of proceeding with a criminal charge, the prosecutor refers the offender to an individual or agency who will give the offender the chance to accept personal responsibility for the offence. The offender is 'diverted' from the criminal justice system.

The diversion agency or individual makes an agreement with the offender. The terms might include making restitution to the victim or society, or to reconcile with the victim, or to participate in a counselling program or a community work program, or any combination of these or other arrangements.

Diversion is intended as a humane alternative with the potential for greater benefit to the offender, society and the victim than conviction for a criminal offence. It is only available when the Crown has enough evidence to proceed to trial. It is not used as an alternative to prosecution when the Crown does not have a case.

The typical candidate is a first-time offender. The offence is usually minor: shoplifting, mischief, minor drug offences, for example. Diversion is not available for certain offences such as impaired driving, sexual offences and prostitution-related offences. Perhaps the most important condition is that the offender must admit responsibility for his or her actions.

THE PROBLEM

The Committee heard two criticisms of diversion.

First: if the offender fails to abide by the terms of the agreement, there are no legal consequences. And second: diversion is not available throughout the Province, on the same terms.

With respect to the first point, the Attorney General's position is that when a diversion agreement is reached, the Crown gives up its right to prosecute for that offence. This holds true whether the terms of the agreement are met or not. It appears that this is not a significant problem. The manager of the Adult Diversion Program in Vancouver reports that only three out of more than 1,000 people have failed to lived up to their diversion agreements.

With respect to the second point, there is a structured, well-run diversion program operating in the Lower Mainland and Victoria. The availability of diversion programs outside of often depends on the resources and attitude of the local Crown Counsel.

On Vancouver Island, diversion is handled by various community service centres which are privatized in the sense that they are under contract to the government. These centres have diversion programs in place and are supervised by the district Corrections Office.

RECOMMENDATION 83

The diversion program now in place in British Columbia should be maintained and encouraged.

RECOMMENDATION 84

The Ministry of the Attorney General should ensure that the diversion policy is uniformly applied by Crown Counsel throughout the Province.

RECOMMENDATION 85

The Ministry of the Attorney General and the Ministry of the Solicitor General should ensure that facilities for diversion are available Province-wide.

Miscellaneous

SELECTION OF JURIES

The *Jury Act* allows the Sheriff to use whatever procedures he wishes to select jurors, as long as certain principles are kept in mind.

The procedure used in Vancouver and elsewhere is a random selection by hand from the voters' list and from other directories - often the telephone book. The result, the Committee was told, is that jury lists tend to stagnate, with the same people being called upon repeatedly. Also, the lists do not reflect the ethnic diversity of their communities. In particular, native Indians are under-represented on jury lists.

RECOMMENDATION 86

The Ministry of the Attorney General should institute procedures, either by amendment to the *Jury Act* or by directive to the Sheriffs, that will ensure that jury panels reflect the ethnic diversity of the various communities in this Province, and that the same people are not called upon repeatedly.

NON-RETURNABLE WARRANTS

THE PROBLEM

When a warrant is issued for the arrest of a person, the 'radius of return' is specified on the warrant. This radius defines the geographic area within which the person, once found, will be returned to the place where the charge was laid.

The rationale is that the amount of money a community is willing to pay to bring back a person suspected of crime in that community, will depend on a number of factors: in particular, the seriousness of the crime. In lesser matters, a decision might well be made not to bring a person back once he has gone beyond the provincial border, or even municipal boundaries. However, when applied to more serious crimes, the effect of these policies has been to encourage fugitives to flee beyond the 'radius of return'.

For example, if a Canada-wide warrant is issued in Montreal and the person is apprehended in Vancouver, Montreal will arrange his return for trial. But if the warrant is only Province-wide, he will not be returned and Vancouver police must simply release him unless they have some reason of their own to hold him.

The result is that criminals go unpunished and the police feel that the system has failed them.

The Proposal

It has been suggested that all warrants for indictable offences be made nation-wide. The Committee agrees with the principle but feels that this is an important discretion which should be exercised by the Crown on a case-by-case basis.

RECOMMENDATION 87

The radius of return on warrants for arrest should remain in the discretion of the Crown.

However, reciprocity among provinces is to be encouraged. This subject should be addressed by the provincial Attorneys General at their next meeting.

Enforcement of Unpaid Fines

The Problem

Failure to enforce payment of fines that are imposed by the courts or prescribed by regulation undermines respect for the administration of justice and the courts. It also deprives government of revenue.

The Committee is concerned with the perception on the part of some that court orders can be freely ignored, and with the apparent inability of the justice system to enforce the payment of court-ordered fines.

The Proposal

RECOMMENDATION 88

The Ministry of the Attorney General should give high priority to the enforcement of fines. In particular, civil enforcement procedures available under the *Offence Act* and the *Small Claim Act* should be applied more rigorously.

Consideration should be given to the acceptance of credit cards in payment of fines and to providing incentives in the form of reduction in penalty for prompt payment.

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 92
DATE: Aug 29/90
KDH

Mr. E.N. (Ted) Hughes, Q.C.
Deputy Attorney General

May 23, 1990

Re: The Private Information Sworn Against
Bill Reid by Moe Sihota

Further to our discussion on May 22, 1990, the following lists the options available to the Crown should the Justice of the Peace issue process on May 28th on the Information sworn by Mr. Sihota on May 18th.

Option 1

The Attorney General could decide not to intervene and allow Mr. Sihota or counsel retained by Mr. Sihota to conduct a private prosecution.

I have attached a copy of an article in the Times Colonist dated Saturday, May 19, 1990 in which Mr. Sihota is quoted as follows:

> "Private citizens are not supposed to litigate criminal cases and it would be improper for me to prosecute" said Sihota, a lawyer.

The article also states:

> If "Lam" (sic, should be Lim) decides there is evidence to warrant a criminal charge, the case would likely be turned over to the Crown attorney's office for prosecution.

It appears from these comments that Mr. Sihota has no intention to conduct this prosecution himself or to retain counsel to do so.

If the Attorney General did not intervene after process were issued and Mr. Sihota either retained counsel or acted as his own counsel, and the case went to a preliminary inquiry and there was a committal, the Attorney General would have to:

a) give his consent to Mr. Sihota or to his counsel to prefer the Indictment and to conduct the trial. Mr. Sihota or his counsel would in effect be the agent of the Attorney General;

b) not give his consent, in which case Mr. Sihota or his counsel would likely refer to s.574(3) of the Criminal Code which enables a private prosecutor to apply to a judge of the Supreme Court to have the Indictment preferred. It is conceivable that a Superior Court judge would prefer the Indictment and comment that the Attorney General should have done so in the first place;

c) intervene, following the committal, to conduct the prosecution. By following this option, however, the public could perceive that Mr. Sihota was right from the outset.

A major concern that has been identified is that if this private prosecution were allowed to proceed, the Crown would be faced with the prospect of other dissatisfied individuals coming forward to initiate their own private prosecutions. The impact on the police should also be kept in mind in relation to their desire to control the charging process. If it is perceived that the Attorney General will permit private prosecutions in sensitive cases, the police may avail themselves of the same opportunity in the future.

The present policy of the Criminal Justice Branch is to examine every privately laid Information and make a determination to either proceed with the prosecution or to enter a stay of proceedings. In my view that policy must be maintained.

Option 2

The Attorney General could intervene to assume conduct of the prosecution and the following options are available:

a) the Deputy Attorney General could enter a stay of proceedings after May 28th but before June 4th. The rationale for exercising this option is that senior members of the Ministry have already made a decision on this case not to proceed. To proceed with a prosecution under the circumstances would permit the use of the criminal justice system for improper, i.e. political, purposes. This would clearly not be in the interests in the administration of justice, regardless of the public perception. An obvious advantage of this option would be that the Crown's position would be a matter of public record through the Commission of Inquiry which is scheduled to recommence on June 4th;

b) the Ministry could involve Mr. John Hall, Q.C. by having him contact Mr. Sihota to review the material that Mr. Sihota has filed. Mr. Hall would conduct a complete review, reach a determination and the Ministry would abide by Mr. Hall's decision. At this point we do not know whether Mr. Hall is amenable to this further involvement. It should also be considered that as Mr. Hall has already reached a decision, Mr. Sihota and the public may view his decision as a fait accompli;

c) the Ministry could retain another outside counsel to review the entire file including Mr. Sihota's material. The Ministry would agree to abide by this counsel's decision. My recommendation is that Mr. Paul Fraser, Q.C. be considered for this assignment.

If option (b) or (c) is adopted, and counsel recommended that a stay of proceedings should be entered, we would instruct counsel to appear in court and put his reasons on the record as to why he exercised his discretion in this manner.

Recommendation

It is my recommendation that should process issue, Mr. Hall should be retained to intervene on behalf of the Ministry to review Sihota's material. Mr. Hall, pre-eminent counsel in the province, would independently make the decision to either conduct the prosecution or to enter a stay of proceedings. However, I confirm that Mr. Hall has not, to date, agreed to act in this capacity. Should Mr. Hall decline to act, I recommend the procedure involving Mr. Fraser.

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

WFS:ew

TIMES COLCNIST

curday, May 19, 1990 (BUDGET..)

would average 11.1 per cent. To this point in the year, however, they've been two points higher than that, at more than 13 per cent.

Reid said every one-point rise in interest rates added another $1.7 billion to the federal deficit.

The Royal Bank recently projected that interest rates wouldn't fall until 1991 unless there was a recession.

The Bank of Canada has been pushing up interest rates to cool the economy and fight inflation, which has been runnning at more than five per cent for months.

Earlier Friday, Statistics Canada reported that the annual inflation rate dipped to 5.0 per cent in April — the lowest rate in 11 months.

Sihota acts to charge ex-minister with breach

By Bruce Skeaff
Legislature staff

New Democrat justice critic Moe Sihota asked a justice of the peace Friday to charge former cabinet minister Bill Reid with breach of trust under the Criminal Code.

Sihota, (Esquimalt-Port Renfrew) appeared before Justice of the Peace Phil Lam in a Vancouver provincial court to swear out an information and present him with a 3.5-cm-thick binder of material to back the claim.

Lam said he would decide May 28.

If Lam decides there is evidence to warrant a criminal charge, the case would likely be turned over to the Crown attorney's office for prosecution.

"Private citizens are not supposed to litigate criminal cases and it would be improper for me to prosecute," said Sihota, a lawyer.

Sihota has threatened since March 20 to charge Reid if the government refused.

Reid was asked to resign from his provincial secretary and tourism portfolios last fall after most of a $277,000 lottery grant went to Reid's former campaign manager and a personal friend.

The RCMP wanted to charge Reid but was overruled by Bill Stewart, the attorney general's assistant deputy minister.

Police asked for a review of that decision but deputy attorney general Ted Hughes upheld the decision that a conviction was not likely.

A ministry official revealed the details after Sihota's threat to launch a private action.

The $277,000 lottery grant was provided to a White Rock society for a recycling program. The information claims Reid arranged for the society to turn the first instalment over to his friend and his former manager who were establishing a recycling equipment supply company.

Sihota said Friday he did not know if his action would interfere with an investigation by provincial Ombudsman Stephen Owen into the attorney general's handling of the case.

"What the ombudsman is investigating is quite distinct from what we're doing," said Sihota.

"But one could have the effect of delaying the other."

Attorney General Bud Smith said he had been advised the swearing of an information against Reid would be no impediment to Owens's hearing.

Smith said he could not comment on the specifics of the case now that it had gone before a justice of the peace.

virtually no knowledge of the facts of the case and had been sent by counsel to request the adjournment. The trial proceeding in this manner lacked the appearance of justice.

See also cases noted under s. 650(3).

APPLICATION OF PARTS XVI, XVIII, XX and XXIII.

572. The provisions of Part XVI, the provisions of Part XVIII relating to transmission of the record by a provincial court judge where he holds a preliminary inquiry, and the provisions of Parts XX and XXIII, in so far as they are not inconsistent with this Part, apply, with such modifications as the circumstances require, to proceedings under this Part. R.S., c. C-34, s. 502; R.S., c. 2 (2nd Supp.), s. 10.

By virtue of this section a provincial court judge has power to take a view as provided in s. 652: *R. v. PRENTICE*, [1965] 4 C.C.C. 118, 47 C.R. 231 (B.C.C.A.).

573. [*Repealed.* R.S.C. 1985, c. 27 (1st Supp.), s. 113.]

PART XX

PROCEDURE IN JURY TRIALS AND GENERAL PROVISIONS

Preferring Indictment

PROSECUTOR MAY PREFER INDICTMENT—Consent to inclusion of other charges—Private prosecutor requires consent.

See in 6p sect.—

574. (1) Subject to subsection (3) and section 577, the prosecutor may prefer an indictment against any person who has been ordered to stand trial in respect of

- **(*a*) any charge on which that person was ordered to stand trial, or**
- **(*b*) any charge founded on the facts disclosed by the evidence taken on the preliminary inquiry, in addition to or in substitution for any charge on which that person was ordered to stand trial,**

whether or not the charges were included in one information.

(2) An indictment preferred under subsection (1) may, if the accused consents, include any charge that is not referred to in paragraph (1)(*a*) or (*b*), and the offence charged may be dealt with, tried and determined and punished in all respects as if it were an offence in respect of which the accused had been ordered to stand trial, but if the offence was committed wholly in a province other than that in which the accused is before the court, subsection 478(3) applies.

(3) In any prosecution conducted by a prosecutor other than the Attorney General and in which the Attorney General does not intervene, an indictment shall not be preferred under subsection (1) before any court without the written order of a judge of that court. R.S., c. C-34, s. 504; R.S.C. 1985, c. 27 (1st Supp.), s. 113.

NOTE: The decisions noted below although decided under the predecessor legislation were felt to be relevant to these provisions.

It is after the presentment of the indictment that the indictment becomes foundation of any further proceedings and the accused is prec d on attacking the regularity of the order to stand trial by way of c i.

with the trial court at the opening of the accused's trial with a c proceed with the trial: *R. v. CHABOT* (1980), 55 C.C.C. (2d) (3d) 258 (S.C.C.) (7:0).

The agent of the Attorney-General who signed the indictme required to conduct the trial: *R. v. ALWARD* (1976), 32 C.C.C. D.L.R. (3d) 290 (N.B.S.C. App. Div.).

575. [*Repealed.* R.S.C. 1985, c. 27 (1st Supp.), s.113.]

INDICTMENT—Criminal information and bill of indictment—Coro tion.

576. (1) Except as provided in this Act, no indictment s ferred.

(2) No criminal information shall be laid or granted and indictment shall be preferred before a grand jury.

(3) No person shall be tried on a coroner's inquisition. R.S s. 506; R.S.C. 1985, c. 27 (1st Supp.), s. 114.

In *R. v. HEMLOCK PARK CO-OPERATIVE FARM LTD.* (197 (2d) 189, 24 D.L.R. (3d) 688 (S.C.C.), it was held (5:0) that a cri mation referred to the historic laying of a charge by the Attorn or some other authorized person directly before a Superior Cou nal Jurisdiction instead of being preferred to a Grand Jury or p a Grand Jury.

DIRECT INDICTMENTS.

577. In any prosecution,

- **(*a*) where a preliminary inquiry has not been held, an shall not be preferred, or**
- **(*b*) where a preliminary inquiry has been held and the a been discharged, an indictment shall not be preferre information shall not be laid**

before any court without,

- **(*c*) where the prosecution is conducted by the Attorney the Attorney General intervenes in the prosecution, th consent in writing of the Attorney General or Deputy General, or**
- **(*d*) where the prosecution is conducted by a prosecutor the Attorney General and the Attorney General does vene in the prosecution, the written order of a judge of t R.S., c. C-34, s. 507; 1974-75-76, c. 93, s. 63; 19 s. 20(2); R.S.C. 1985, c. 27 (1st Supp.), s. 115.**

NOTE: The decisions noted below although decided under the p legislation were felt to be relevant to these provisions.

Where the Attorney-General consents to the preferring of the i it is sufficient that the Attorney-General has personally signed ment and he is not required to be present in court when the ind actually preferred: *R. v. PHILBIN and HENDERSON* (1977), 37 C 528, [1978] 1 W.W.R. 122 (Alta. S.C. App. Div.); *R. v. DWYER and* (1978), 42 C.C.C. (2d) 83 (Ont. C.A.), revd on r grounds 47 C 1, [1980] 1 S.C.R. 481, 10 C.R. (3d) 20; *ALDERSTONE*

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 93
DATE: Aug 29/90
KRH

Mr. E.N. (Ted) Hughes, Q.C.
Deputy Attorney General

March 23, 1990

56960-20/REID1

Re: Actions Taken By Mike Harcourt and Moe Sihota Concerning the Decision of the Criminal Justice Branch Not to Lay Criminal Charges Against Bill Reid

Further to our recent conversation, attached is a draft of a proposed speech the Attorney General might consider in dealing with the allegations against Mr. Reid and the process in which our office handled this file. In my opinion we must ensure that the integrity of the Crown Counsel office is preserved from any political interference and I am concerned about the following issues:

1) what should our course of action be should Mr. Sihota lay a private Information on April 19th?

2) the public is not aware that Mr. Peck, Q.C. recommended charges. That information should be released through the Ministry and not as an expose in the press. You will recall that during our meeting on February 13th, Mr. Peck referred to Mr. Hall, Q.C. as "the guru" in the commercial crime area of the law and although Peck maintained his position he would defer to Hall's experience re the decision.

3) the attached document sets out in detail the process we followed. A number of dates have not been included as they are ones involving either yourself or the Attorney General.

4) on March 23rd I was advised by Bob Edwards, Q.C. that he has been instructed by Mel Smith to implement recommendation number 5 of Brian Marson's report, that is, to take action to recover the money advanced to the Semiahmoo Society. Bob will be forwarding a briefing note to you concerning this issue.

During the morning of March 23rd I spoke with the Attorney General and advised him generally of our proposals. His reaction concerning Mr. Hall's involvement was positive but he expressed concern that because of Hall's participation in the past decision that the public may view his continued involvement with some suspicion. I stated that Mr. Hall is the most highly respected criminal lawyer in the province whose reputation is unassailable. Rather than hold a news conference, the Attorney suggested that a letter be sent to Mr. Sihota and Mr. Harcourt inviting them to meet with Mr. Hall and to provide him with any further evidence and opinions they may have. It was the Attorney's suggestion that this letter not be released until after and Information was sworn by Mr. Sihota. I stated that it was my opinion that such a letter should be made public as soon as possible as it would put the onus on Messrs. Harcourt and Sihota to produce their legal opinions and any new information they may have. The Attorney did not commit himself one way or another concerning this proposed letter.

I should point out that this statement can be issued by either you or the Attorney General.

Finally, I have not contacted Mr. Hall to see whether he would agree to further participate in this process.

I look forward to discussing this file with you at your convenience.

William F. Stewart
Assistant Deputy Attorney General
Criminal Justice Branch

WFS:ew
Enclosure

PROSECUTE INQUIRY
EXHIBIT # 94
DATE: Aug 29/90

I deeply regret the actions taken this week by Opposition Leader Mike Harcourt and Justice Critic Moe Sihota concerning the case involving former Cabinet Minister, Bill Reid.

Mr. Sihota and Mr. Harcourt threaten to take the law into their own hands by conducting a private prosecution against Mr. Reid if I do not personally intervene and instruct the laying of criminal charges.

Their actions politicize a process which must remain independent from partisan politics.

Given Mr. Reid's position as a member of this Government, it is inappropriate for me to be personally involved in deciding whether or not he is to face criminal charges as a result of his handling of Go B.C. funds.

The decision-making process to date was independent of my office and free from any political influence and I intend on keeping it that way.

However, I would not be fulfilling my oath of office as the Attorney General of British Columbia if I were not to respond to this unprecedented action.

I have called this news conference to firstly explain the process used to arrive at the decision that criminal charges are not warranted, and secondly, to inform the public of action I have taken in response to these threats by Mr. Sihota and Mr. Harcourt to personally initiate a prosecution.

Generally speaking the views of Crown Counsel in assessing criminal allegations are not made known to the public. There are good reasons for this. These opinions may unnecessarily damage the reputations of persons not charged with criminal offences or prejudice the right to a fair trial of those who are. As the actions of Mr. Sihota and Mr. Harcourt suggest that the manner of decision-making was politically motivated and not in the public interest, I have no alternative but to outline in detail the process used to determine that criminal charges are not warranted against Mr. Reid.

The practice in British Columbia is for the police agencies to investigate incidents and where appropriate to recommend criminal charges to Crown Counsel.

It is the established role of Crown Counsel in British Columbia to review the results of the investigation and the police recommendations and to determine whether criminal charges are appropriate in accordance with well established policy. This policy requires that Crown Counsel only proceed with criminal cases where they are satisfied that there is a substantial likelihood of conviction and it is in the public interest to proceed with the prosecution.

There is good reason for this policy. The criminal justice process should not be invoked in cases where the allegations cannot be substantiated. To do otherwise would entail unjustified expenses from both the Crown and the defence; it would inappropriately clog the courts; and unfairly sully the reputation of innocent persons.

Thousands of charges are referred each month to Crown Counsel across British Columbia. While in the majority of cases Crown Counsel approve the proposed charges, it is not uncommon for Crown Counsel to reject the recommendations of the investigating officers, or to refer the case back to the police for further investigation.

In this case the Commercial Crime Unit of the R.C.M.P. in Vancouver investigated the incident in question and prepared a Report to Crown Counsel which was received on December 11, 1989.

This Report was reviewed by Regional Crown Counsel Bob Wright, Q.C. who determined that there was not a substantial likelihood of conviction. (Position and background of Mr. Wright). Mr. Wright's report to Mr. Stewart is dated January 17, 1990.

As is the usual practice in cases involving allegations against prominent persons or politicians, the opinions of senior respected members of the private bar were requested, and relied upon, to eliminate any suggestion that the final decision was not independent in nature. Indeed, this practice is established in Criminal Justice Branch policy which states that it is appropriate to utilize private practitioners "to make, or advise upon, charging decisions and/or to prosecute significant or high profile cases in order to avoid the perception of conflict of interest or the perception of political interference".

For this reason Mr. Richard Peck, Q.C. (background) was retained on January 8, 1990 to provide an independent opinion concerning the merits of criminal charges. In his opinion dated January 18, 1990 it was the view of Mr. Peck that criminal charges were appropriate. However, Mr. Peck was firmly of the view that before criminal charges proceeded a second opinion should be obtained from a leading member of the private bar with extensive experience in prosecutions of this nature.

Consequently Mr. John Hall, Q.C. was retained. (outline the date he was retained, CV material concerning John Hall, the fact he is the only person we know who has conducted a prosecution under one of these cases in B.C., why he was not retained first, extensive experience in commercial cases).

On January 29, 1990 Mr. Hall provided the opinion that criminal charges are not warranted as there is not a substantial likelihood of conviction. This opinion was further supported by an opinion obtained from Ace Henderson who acted as counsel in the office of the Comptroller General inquiry. Mr. Henderson in formulating his opinion had the opportunity to review the demeanour of all relevant witnesses who testified during the O.C.G. inquiry. Mr. Henderson was firmly of the view that charges should not proceed.

The Assistant Deputy Attorney General for the Criminal Justice Branch, Mr. Bill Stewart, reviewed the opinions of the above-noted counsel and determined that criminal charges were not warranted as there was not a substantial likelihood of conviction. This opinion, along with the opinions of the other counsel noted, were provided to senior members of the R.C.M.P. on January 30, 1990.

In a letter dated February 7, 1990 to the Deputy Attorney General, Ted Hughes, Q.C., Deputy Commissioner D.K. Wilson, Commanding Officer "E" Division of the R.C.M.P. requested that he review Mr. Stewart's decision. This review procedure was established following the recommendations of the Justice Reform Committee that police have an avenue of review of Crown Counsel decisions up to the Deputy Attorney General. In making this request the R.C.M.P. also asked for the opportunity to conduct further investigation before the review process was concluded. They were afforded this opportunity. The evidence obtained was considered as part of the review process.

Mr. Ted Hughes, Q.C., (background) in conducting his review met with Messrs. Stewart, Wright, Hall, Peck and Henderson on February 13, 1990 in Vancouver to ensure that he had a firm understanding of the facts and the legal opinions provided. In that meeting Mr. Peck maintained his original position while Mr. Wright, Mr. Henderson and Mr. Hall remained firmly of the view that criminal charges were not warranted. At the conclusion of the meeting there was a consensus of all persons in attendance on the following issues:

i) Mr. Hughes had at his disposal all of the facts pertinent to this case;

ii) the legal opinions provided to him were full and complete;

iii) the review and final decision on whether charges should proceed were to be in accordance with the same rules which apply to all other British Columbians (as I have outlined above); and

iv) that the review was to be completely independent of the Attorney General's office.

On February 22nd, Mr. Hall provided another report recommending against a prosecution. Mr. Peck also provided a further report on that date.

In a letter dated February 23, 1990, Mr. Hughes advised Assistant Commissioner Wilson that the criminal process would not be engaged against Mr. Reid as there was not a substantial likelihood of a conviction.

I was advised on   by Mr. Hughes of the decision not to proceed with charges.

On   I announced to all British Columbians the decision not to proceed. I did not provide all of the details of the decision consistent with Crown Counsel practice in other cases for the reasons stated above. Additionally, the public was provided detailed information concerning these incidents in the Auditor General's report which was handed down on the same date.

I confirm that there is no separate test for approving criminal charges involving politicians. The same standards apply and the same protection exist for Mr. Reid as for other members of the public. It may be argued that in the case of politicians there is a greater right to know. This right to know should not be used to create different charging standards for politicians. Rather, other forms of inquiry may be appropriate and in this case this was achieved through the inquiry of the office of the Comptroller General the results of which were fully disclosed to the public.

I remain completely satisfied that the decision-making process used in this case was based upon a fair and equal application of law and policy without any political interference whatsoever.

Notwithstanding the demands of Mr. Sihota and Mr. Harcourt, it is entirely inappropriate for me as Attorney General to personally intervene to decide whether criminal charges should proceed. To do so could create the perception that the law is not applied equally to all persons in British Columbia. This is exactly why independent counsel were consulted and why I was not involved in the decision-making process in the first place.

However, as Attorney General of British Columbia I cannot allow Mr. Sihota, Mr. Harcourt or any other member of the public to use the criminal courts improperly. If charges are to proceed against Mr. Reid they will be conducted on behalf of the Crown using all of the resources available to ensure the most effective case is placed before the courts. If, on the other hand, criminal charges are not appropriate it is my duty in this office to ensure they do not proceed for the political or private purposes of any individual.

As action must be taken in response to this threat to initiate criminal proceedings, and as it would be improper for me to become personally involved, I have taken the following steps.

Mr. John Hall, Q.C. has been retained to continue to act as independent counsel. Mr. Hall has been chosen given his stature in the legal community, his expertise concerning these types of criminal prosecutions, and his unparalleled reputation in the criminal justice system for integrity and independence. He is also retained as it was his opinion which played a major part in the final decision not to proceed with criminal charges.

In appointing Mr. Hall I have asked him to contact Mr. Sihota and Mr. Harcourt to determine whether they will provide him with any additional evidence they have in their possession or any legal opinions in support of their position that criminal charges are appropriate. If Mr. Sihota and Mr. Harcourt are prepared to release this information I have further instructed Mr. Hall to carefully consider this information and if he is satisfied based on his review that there is a substantial likelihood of conviction he is to arrange for the swearing of criminal charges and to conduct the prosecution on behalf of the Crown using all of the resources available to him.

However, if upon his review, Mr. Hall remains firm in his present opinion that criminal charges are not warranted I have further authorized him to stay any proceedings which may be initiated by any private individual.

This action must be taken to preserve the independence and integrity of the criminal justice process in British Columbia. Decisions such as whether or not to charge Mr. Reid must be completely divorced from political affairs. It is only when Crown Counsel act independently from political considerations that they are able to properly balance the interests of ensuring that the public is protected by vigorously pursuing criminals on one hand, but on the other protecting the rights of all British Columbians from unwarranted criminal prosecutions.

As Attorney General of British Columbia I am not prepared to allow Mr. Sihota, Mr. Harcourt or any other person to in any way interfere with a justice system that applies equally to all British Columbians.

As my instructions to Mr. Hall include the prospect of initiating criminal charges, it would be inappropriate for me to comment further as this matter may be dealt with by the criminal courts. I trust that Mr. Sihota and Mr. Harcourt will co-operate with Mr. Hall in providing any information they may have to bring about an early resolution of this matter. I await Mr. Hall's decision along with all other British Columbians.

British Columbia
OFFICE OF THE ASSISTANT
DEPUTY ATTORNEY GENERAL
Attorney General
CRIMINAL JUSTICE BRANCH

MEMORANDUM

Third Floor, Harbour Square, 910 Government Street, Victoria, British Columbia V8V 1X4 — Telephone (604) 387-3840

Mr. Hal Yacowar
A/Assistant Deputy Attorney General
Criminal Justice Branch

August 24, 1990

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 95
DATE: Aug 29/90
KRA

Re: Charge Approval Standards

A. CRIMINAL CODE PROVISIONS

The test set out in s.504 for a justice to receive an information alleging an indictable offence is that a person:

> "on reasonable grounds, believes that any person has committed an indictable offence".

S.788 of the Criminal Code authorizes a justice to receive an information and issue process for summary conviction offences, but is silent as to the test for an allegation. S.795 would make the test for indictable offences under s.504 applicable to summary conviction charges.

B. PEACE OFFICERS

The test set out in s.495 for a peace officer to arrest without warrant is that the arrestee:

> "has committed an indictable offence or who, on reasonable grounds, (the peace officer) believes has committed or is about to commit an indictable offence".

The case of Chartier v. Quebec (A.G.) (1979) 9 C.R.(3d) 97 (S.C.C.) states that in order to arrest without warrant, a peace officer must have reasonable and probable grounds for believing in the persons' guilt and that belief must take into account all the information available to him. The officer is entitled to disregard only that information which he has good reason to believe is not reliable.

Recycled Paper

I suggest what is commonly referred to as the "reasonable and probable grounds to believe" test generally employed by police in recommending and approving charges may be a combination of the language in s.504 and s.495 and the case law.

C. POLICY OF BRITISH COLUMBIA CROWN COUNSEL

The test in British Columbia for approving a criminal charge based on a report from an investigative agency is that the evidence discloses a "substantial likelihood of conviction and if so, whether the public interest requires a prosecution of the accused".

D. CROWN COUNSEL POLICY IN OTHER PROVINCES WHERE CROWN PRE-APPROVE CHARGES

Two provinces, New Brunswick and Quebec, review reports from investigative agencies prior to the laying of any criminal charges. The tests applied in these two provinces are:

1. New Brunswick - "A reasonable prospect of conviction". This test is considered to be a higher standard than that applied to a justice receiving an information. The public interest is always considered. New Brunswick has a written manual and a copy has been requested.
2. Quebec - "Reasonable and probable grounds". This is not considered to be a higher test than set out in the Criminal Code. The public interest is considered, at least to the extent that the prosecution not be frivolous, vexatious or malicious. Quebec is in the process of commiting their policy to writing. A copy has been requested when available.

E. CROWN COUNSEL POLICY IN OTHER PROVINCES WHERE POLICE APPROVE CHARGES

Other provinces surveyed review the reports received from investigative agencies at various times after an information has been sworn. These jurisdictions, with the exception of Manitoba, have not articulated the Crown's test into a written policy. The tests are described as follows:

1. Prince Edward Island - "Reasonable and probable grounds" which is described as being the same test applied by the police. They tend to look at legal impediments rather than factual deficiencies. Their test is also described in a negative form - "the evidence does not give rise to a probability of conviction". Because of the complexity and expense in prosecuting commercial crime cases, they apply a test of "substantial likelihood of conviction" which they consider to be higher than for other criminal offences.

2. Ontario - "Reasonable and probable grounds based on admissible evidence". The public interest is also considered in continuing the prosecution. They distinguished their test from the police test in a similar fashion to P.E.I. i.e. the existence of a legal impediment as opposed to a factual one.

3. Saskatchewan - "Reasonable and probable grounds". They consider their test to be the same as the test applied by the police in swearing the information. Public interest is considered. A higher test applies to commercial crime cases because of the expense and complexity in such prosecutions. The test there is one of "probable conviction".

4. Manitoba - "Whether or not a reasonable likelihood of conviction exits" and "that it is not contrary to the public interest to proceed." The test is considered at least slightly higher than the test of a justice to accept an information. A copy of their written policy has been requested.

5. Nova Scotia - "Reasonable and probable grounds to proceed". This appears to be the same test applied by the police in swearing the information. Recommendations in the Marshall Report regarding post-charge screening are being implemented, at least in pilot projects.

Because of annual vacation and in one case, a provincial Crown conference, I was unable to obtain information from other jurisdictions in the short time period.

I trust this is the information you require.

Andrea S. Miller
Barrister and Solicitor

ASM:vy

DISCRETION TO
PROSECUTE INQUIRY
EXHIBIT # 96
DATE: Aug 29/90
KDH

CRIMINAL JUSTICE BRANCH

MINISTRY OF ATTORNEY GENERAL

STATEMENT OF PURPOSE AND PRINCIPLES

STATEMENT OF PURPOSE

The Criminal Justice Branch, of the Ministry of Attorney General, is a key component of British Columbia's criminal justice system. Our purpose is to contribute to the protection of society by preparing for and conducting prosecutions diligently and fairly, and by striving to develop the most effective methods to administer justice in our community.

We, the members of the Criminal Justice Branch, are governed by six fundamental principles in fulfilling our purpose:

FAIRNESS

We act with fairness and impartiality in our pursuit of justice.

INDEPENDENCE

We perform our public service without regard to improper influence or interference.

RULE OF LAW

We apply the Rule of Law consistently and diligently.

EXCELLENCE

We achieve excellence by working together and by employing our skills and knowledge in accordance with the highest ethical standards.

ATTITUDE

We serve the public with courtesy and respect.

COMMITMENT

People are our most valuable resource. We are dedicated to being open, honest and trustworthy and to treating one another with respect, dignity and fairness. We endeavour to recognize individual achievement, to share information, knowledge and resources, and to facilitate career advancement and educational upgrading.

PROSECUTE INQUIRY

EXHIBIT # 97

DATE Aug 3/90

KDH

Leave granted.

MR. LOENEN: On behalf of the Premier and me, it's indeed a delight to welcome a group of ESL students from Palmer School. I had occasion to be in their classroom recently to talk about government and democracy, and I can tell you that these students, new arrivals though they are, have a great deal of appreciation for our democratic processes. They are accompanied by their teacher, Miss Hislop. In addition to that, Mr. Kuo, the father of one student, is here from Taiwan. Would the House make all of them very welcome.

In addition, with us in the precincts this afternoon from Point Grey are two strong supporters of Social Credit and our government, Bill and Gladys Nesbitt. I ask the House to welcome them.

HON. S.D. SMITH: Just before I get to the question relating to the Expropriation Compensation Board's activities, there are a couple of things I want to refer to. I know the member for Esquimalt-Port Renfrew was in and out of the chamber this morning, and there may be things he missed. By his remarks, I think perhaps there are.

May I start with the last first with respect to my style and that member — and indeed other members of this House — in relationship to the office of Attorney-General. I know the member was out this morning at the time I said this, and I know he would want me to share with the House that I extended to him, as critic for this portfolio, the opportunity to work cooperatively with me where he considers it appropriate. The day after my swearing in, for instance, I spent a considerable amount of time in my office with the member, sharing my views about the challenges that were then before the system — and there were some — and giving him assurances that he could avail himself of my office and our support staff for the supply of facts about matters that may be of concern to him.

As well, I had the pleasure of hosting the member for Esquimalt-Port Renfrew for a light breakfast but a full briefing by myself and the deputy Attorney-General prior to the news conference relating to the release of the Justice Reform Committee report, so that the member would have the opportunity to be briefed in response to the media. In addition, I invited the member to submit his nominations for the designation of Queen's Counsel. I was pleased to provide participation for him beside me at a public hearing of interested persons convened to discuss court facilities in the Western Communities and greater Victoria.

I say this simply because I want to be certain there is no doubt in anyone's mind about my view of my role in this job and my style of operation. In the last couple of days in the media there has been occasional castigation of members in this House, apparently for not correcting quickly enough statements that were made which may have tended to misinform the public. The media picked up on them and ran with it; subsequently they were corrected, and there was some scolding from the media that perhaps members ought to have done that a little sooner.

With that in mind, I want to say that I know the member for Esquimalt-Port Renfrew issued a press release last week referring to comments I had made about the Charter of Rights and Freedoms. I know the release had implied.... At least, the inference drawn from it by the media was that I had been referring to Madam Justice McLachlin's decisions specifically, rather than to the Charter — as indeed was the case — in relationship to what I said about the Americanization of Canada, which is something about which I feel very strongly. I want to correct it again today. I know that this statement was made in the House again, and a cursory glance at *Hansard* would disclose that what I said was to suggest that the Charter does more to Americanize Canada than any other single document I could ever imagine in this country. That was the reference.

Last Friday one of the major radio stations in Vancouver picked up on that following the press release and corrected the member for Esquimalt-Port Renfrew. I simply want to put it on the record, so we know what was being discussed.

In addition to that, today I did indeed refer to 17,000 applicants for the family maintenance enforcement program, but most certainly I did not say that it surprised me. Indeed, it didn't surprise me at all. I wouldn't want that to be left on the record.

Mr. Chairman, it's interesting that the member refers to the Gitksan case and others as legal harassment. These cases are now before the courts and were initiated by the native community in this province — very important cases. In fact, in terms of the Gitksan case, the Chief Justice of British Columbia, Mr. Justice McEachern, referred to it just yesterday or the day before as perhaps the most important case ever tried in the province of British Columbia. I find it odd that it would be characterized — or at least could be characterized — as legal harassment. I don't think I would ever characterize what's going on in the hon. Chief Justice's courtroom as legal harassment. I don't think it would be fair to him to have characterized as legal harassment what is taking place in his court and what he has called the most important case ever tried in British Columbia. I think we can do better than referring to something that important as legal harassment.

Mr. Chairman, the member referred to the Workers' Compensation Board. As I said this morning, pleased as I am with the progress we've made in relationship to legal aid, I understand fully that access to justice requires a well-funded legal aid system. And pleased as I am to have been able to persuade my colleagues and get the support of the Premier of the province and my cabinet colleagues to enhance our legal aid program as much as we have this year, I don't — by any stretch of the imagination — rest satisfied that we are doing enough. Indeed, I think we can be doing more, and I'm going to work hard to ensure that we are doing more with the understanding always that the money we are spending is sent to us by the people, and there are obviously limits on what they can send us.

Reid prosecution halted by police-file roadblock

PROSECUTE INQUIRY 98

DATE: Aug 3/[illegible]

by John Piler

VICTORIA — The New Democratic Party's prosecution of Surrey MLA Bill Reid has been withdrawn because the attorney-general will not release the report of an RCMP investigation into the former Cabinet minister's lottery-funds dealings.

NDP justice critic Moe Sihota told a news conference that without the material from police files, their private prosecution could not proceed.

And he questioned the motives of Attorney-General Bud Smith in "setting up roadblocks" which brought the private charges against Reid to a halt.

"If, indeed, the documents that we have asked for do not contain the basis for a conviction — as the attorney-general says — then why is it (he) will not release that information? What is it that Mr. Smith has to hide?" asked Sihota.

He said Smith should "recognize his responsibilities" and turn over the RCMP and comptroller-general files and transcripts from their investigations to the NDP counsel, Peter Firestone.

"The attorney-general cannot have it both ways. On one hand he cannot say he will not prosecute, and then on the other, not give us the documents that would allow us to prosecute — it would be impossible for us to continue without them."

Sihota accused Smith of "seeking to frustrate the process by not prosecuting (Reid) himself. It is unfair. The attorney-general cannot expect us to go to court with one hand tied behind our back."

Smith countered later at his own news conference that to release the documents other than under subpoena would be setting a precedent which might affect pending federal legislation and future private prosecutions.

The attorney-general said his ministry "would be fully cooperative" to provide Firestone with the material, but only through appropriate subpoena procedures.

He said in dealing with the Reid affair, "It would have been expedient, quite frankly, for me to have taken a different course. It would also have been wrong, and therefore I didn't do it."

As to the suggestion that he had something to hide, the attorney-general said such an allegation "is a touch exaggerated."

Smith said whatever was done in this case "would have to stand the test of time, when others may want to pursue private prosecutions. What would or did happen here would be blazing a trail, so I wanted to take great care that this office is protected."

Sihota said subpoenaing the material had been considered, and rejected, by Firestone, who said the subpoena power "is useless to me as a private prosecutor because there is no power for a provincial court judge or justice of the peace to order that documents be produced."

MLA Bill Reid

Firestone says he would not be allowed any opportunity in advance to review any such material.

"This, of course, is untenable in terms of an ongoing prosecution," he said.

Sihota told reporters that Reid's counsel, noted Vancouver criminal lawyer Peter Butler, would be all but certain to fight any effort to apply for a subpoena, "and this matter would be fraught with technical arguments which would take us from here to the Supreme Court of Canada."

Reid was sacked as provincial secretary in September 1989 when details were revealed of his involvement in channeling more than $277,000 in lottery funds to a White Rock recycling company headed by his campaign manager, George Doonan, and a close family friend, Bill Sullivan.

The comptroller-general's probe of the issue found that Reid's involvement was "improper and irregular." No grant had been applied for, and Reid's close personal relationship with the two men had not been revealed.

The RCMP twice urged the laying of charges, but were overruled by the A-G's ministry, which argued that a conviction was unlikely.

Sihota said Smith's handling of the case "is an incredible frustration of the judicial process. It is damn well unfair for a minister of the Crown, when a colleague of his is being brought before the courts … that the attorney-general not turn over the documents."

Questioned about political motives in laying the charge, Sihota said he doubted that a justice of the peace "would have approved it in the fashion that he did, nor, if it were a weak case, would the RCMP have recommended that charges be laid."

He said the key question "is whether judgment should be passed on Mr. Reid quietly in the confines of the A-G's office, or openly in court, where the public can see the merits of the case, one way or the other."

Fire departmen

Port Kells fire hall at
Avenue and Harvie Road w
hold a 50th anniversary op
house this Saturday.

SEARS
AD CORRECTION
In Sears newspaper ad of Sunday, July 1, the following error occurred.
Craftsman lawnmower ad should have read Save $^{\$}50^{00}$. Regular price $^{\$}509^{99}$. Sale price $^{\$}459^{99}$.
Sears apologizes for any inconvenience we may have caused.
SEARS
Canada Ltd.

NEEDS CASH?, LOANS
WANTED: Estate Jewellery & Goods
PAWNSHOP

ICEE
BINGO
Every Mon & Thurs
Bonanza - 6:45 p.m.
Early Bird - 7:00 p.m.
Regular - 7:15 p.m.
NOW 19
$100 GAMES
According to attendance
PLUS

THE KI
GRAND OP
20
CHILDRENS N
CLOTHING
SPECIALIZING I
6 Y
10491A - 135A Street
Surrey
At the corner of 105 Ave & 135A St
58

#1 sav
& d
TOP QUALITY AT WHOLESALE PRICES
when y
directl
manu
Verticals – Ov
Horizontals – O
free
#1 save-
& dra

If your mortgage renews in July, August or September, here's great news!
MORT
TRAN
S
Our Mortgage Transfer Sale package has been so popular, we're extending our offer for a limited time only.
CASH BONUSES UP TO $500!
Move your mortgage to Delta Credit Union and receive a cash bonus of $5 for every $1,000 you transfer, to a maximum of $500! Think of the possibilities of putting your bonus to good use!
NO TRANSFER FEES!
More good news! We won't charge you to transfer your mortgage to Delta Credit Union, either. We'll pick up the
one to five y
MORE GC

WRITTEN SUBMISSION OF THE ROYAL CANADIAN MOUNTED POLICE TO THE DISCRETION TO PROSECUTE INQUIRY

DISCRETION TO PROSECUTE INQUIRY
EXHIBIT # 99
DATE: Aug 30/90

TO: STEPHEN D. OWEN, COMMISSIONER

1. In keeping with the terms of reference of the Inquiry, the purpose of this submission is to comment on some of the practices which have been followed by the Attorney General's Department in the Province of British Columbia when dealing with investigations carried out by the police.

THE CORRECTNESS AND ADEQUACY OF THE PROCESS

2. It is important initially to set out some principles related to the right to commence criminal proceedings by way of prosecution and the discretion associated with it.

3. By virtue of s.504 of the **Criminal Code**, R.S.C. 1985, c. C-34, **anyone** who "on reasonable and probable grounds, believes that a person has committed an indictable offence **may** lay an information in writing".

4. In **Attorney General of Quebec v. Lechasseur et al.** (1981) 63 C.C.C. (2d) 301, the Supreme Court of Canada held provincial provisions of the **Youth Protection Act** inoperative because they conflicted with the **Juvenile Delinquents Act** and with Section 455 (now s.504) of the **Criminal Code**. The provincial legislation in question provided that where any person had reasonable cause to

believe a child committed an offence, the director of youth protection was seized with the case before the institution of any judicial proceedings. Laskin C.J.C., as he then was, ruled that it was "uncontestable" that s.455 was within federal competence as an exercise of power in relation to the criminal law, including procedure.

5. The right to lay an information is one vested in the individual citizen. As Laskin C.J.C., said at 63 C.C.C. (2d) 307 of **Lechasseur**, s.455 "reflects a fundamental precept in the right of an ordinary citizen, the victim of a criminal offence, to lay an information against the offender".

6. The power to prosecute is discretionary. In his speech in the House of Commons in 1951, Sir Hartley Shawcross said:

> It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject to prosecution. Indeed the very first regulations under which the Director of Public Prosecutions worked provided that he should...prosecute wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest. That is still the dominant consideration.
>
> (H.C. Debates, Vol. 483, col. 681, Jan. 29, 1951)

In **The Attorney General, Politics and the Public Interest**, J.Ll.J. Edwards said that these views continue to represent the proper theory of criminal prosecution. Professor Edwards reviewed the various considerations that constitute the public interest and concluded that it is impractical to lay "... down hard and fast rules that will confer a high degree of predictability as to the result of their application. The very nature of discretionary authority requires resistance to any attempt to develop rigid rules that cannot encompass every possible contingency" (p.426, also reference generally chapter 13, "Discretionary Factors in the Decision to Prosecute" pp.403-442; also **R. v. Commissioners of Police of the Metropolis, ex parte Blackburn** [1968] 2 Q.B. 118 (C.A.) per Denning M.R. at pp.135-139)

7. The Board of Commissioners of Police of Metropolitan Toronto came to similar conclusions respecting the difficulty of precisely defining how a discretionary power ought to be exercised. Philip C. Stenning in a study paper prepared in 1981 for the Law Reform Commission of Canada entitled **Legal Status of The Police (Criminal Law Series)** quoted from the Toronto inquiry as follows at page 128:

> The question of when, by whom, and under what circumstances, a decision not to prosecute is proper exercise of discretionary power, can never be satisfactorily defined in precise terms. Any attempt to lay down rules so that discretion could be exercised in a uniform

> manner does not seem to offer any hope that suspicions of its improper use would never arise in the future. Indeed, if some such rule was in existence, it could actually discourage the use of quite proper discretion under some circumstances.
>
> Noting that such discretion had in fact been exercised by officers at various levels of the force (up to the level of deputy chief) in relation to the cases it had inquired into, the board concluded that:
>
> Criticizing a judgment must not be interpreted as a restriction on the ability of and the need at times for senior officers to use their judgment and their discretion. As long as it is exercised impartially, fairly, and with reason, it should not be discouraged.

8. Within the R.C.M.P., as well as other police organizations, the responsibility for the ultimate exercise of the discretion must frequently rest with senior officers in difficult, important, or highly sensitive cases. The Commissioner of the R.C.M.P., as the "chief constable", is the person who must finally answer for the decisions of his officers and the deployment of his policing resources (References: **Wool v. The Queen and Nixon** (1981), 28 C.L.Q. 162 (F.C.T.D.); **R. v. Commissioner of Police of the Metropolis, ex parte Blackburn**, supra, para.71; Edwards, **The Attorney General, Politics and the Public Interest**, supra, para.71, at pp.404-5; Stenning, **Legal Status of The Police** supra, para.72, at pp.128-130)

9. While the responsibility for the institution of criminal proceedings is primarily vested in the police officer who conducts a criminal investigation, a mature exercise of the responsibility often dictates consultation and co-operation between the police and the law officers of the Crown. In an address to the 73rd Annual Conference of the Canadian Association of Chiefs of Police, the Honourable R. Roy McMurtry, then Attorney General of Ontario, said:

> " In a proper working relationship between two professionals who have mutual confidence in each other's professional skills and judgment, it should be fairly rare that any question should arise as to who has the final decision to initiate or not to initiate criminal proceedings.

The Criminal Code specified that only for a handful of offences is the consent of the attorney general required before a prosecution can be launched. The oath by which a prosecution is commenced is the oath of the officer who swears the information, and not the oath of the crown law officer who advises the officer as to the law. And the fundamental principle here is that no one can tell an officer to take an oath which violates his conscience and no one can tell an officer to refrain from taking an oath which he is satisfied reflects a true state of facts.
(Note that this statement may be modified by the decision in the Wool case two years later, supra -BP)

Crown counsel are, of course, available for consultation during an investigation and prior to the laying of a charge. They should be available when an officer is deciding whether to lay a charge or which one of a number of possible charges should be laid. This kind of consultation must be encouraged as a great number of potential problems can be and in fact are avoided by timely consultation between crown attorneys and police in those cases where some legal question really does need to be addressed at an early stage. This is particularly so in complex and involved cases or highly specialized types of prosecutions.

The law officers of the crown in fact have a duty to advise as to the law relating to a contemplated prosecution. The crown law officers also have a similar duty to advise whether it is in the public interest that a prosecution be commenced. And of course, once a charge has been laid the law officers of the crown, as officers of the court, must maintain direction of the course of the prosecution.

But it is often overlooked by the public that no government, no attorney general, no crown law officer, has any power to direct any police officer that the officer must swear his oath upon an information for an alleged offence.

(Speech to the Annual Meeting of the Canadian Association of Chiefs of Police, published in **R.C.M.P. Gazette** (1979), Vol. 41, No. 12, p.5)

10. Notwithstanding the legal authority of the individual police officer to initiate a charge on his own, a Peace Officer, "... as a matter of police organization, ... must act on the advice and often on the instructions of his superior officers and the legal department" (**Glinsky v. McIver**, [1962] 1 All E. R. 696 at 701 per Viscount Simonds; also at 708 [Lord Radcliffe] and 710 [Lord Denning]).

11. The obvious benefit and good sense of consultation between and among the police and Crown law officers to which the Honourable Roy McMurtry referred is underscored by the legal and contractual framework within which the R.C.M.P. work.

12. In provinces in which the R.C.M.P. provide provincial policing services, the Force enjoys a relationship with the provincial Attorney General in which he and his department provide legal advice and assume responsibility for proceedings by way of prosecution relating to violations of the **Criminal Code** in which the R.C.M.P. conduct the investigations.

13. In cases of special importance, of unusual complexity, of particular sensitivity, or of uncertain legal principles, it is

natural and proper that police officials will seek, and Crown law officers will provide, advice on a wide variety of aspects in relation to cases under investigation. In the Reid case, one or more of the foregoing factors existed meriting consultation at a senior level. Police acting in good faith ought not to be criticized for seeking and accepting advice from the law officers of the Crown, at whatever level, nor should law officers hesitate to give advice to the Police when it is sought.

14. It is submitted that a review of the process invoked in the Reid investigation demonstrates that the R.C.M.P. acted in good faith in dealing with the facts and in responding to the advice and action of the Department of the Attorney General and properly fulfilled its public duty.

In conclusion it must be emphasized, however, that where a special case would warrant it, and the R.C.M.P. did not consider the Reid case to be such a special case, there remains, as a matter of law, an unfettered discretion with the police to lay an information notwithstanding any consultation with or advice given by officers of the Attorney General.

THE CORRECTNESS OF THE GENERAL PRACTICE, OF NOT PUBLICLY DISCLOSING INFORMATION AND EVENTS THAT ARE CONSIDERED IN DECIDING NOT TO PROSECUTE A CITIZEN

The Royal Canadian Mounted Police adopt and submit the following extract from a paper by Douglas Rutherford, Q.C., Associate Deputy Minister of Justice, presented to the Annual Federal Prosecutor's conference at Halifax, Nova Scotia, June 29th ,1988, as a correct statement of the practice not to disclose the information and events which are discovered in a police investigation, where charges are not subsequently laid:

> The Attorney General is frequently privy to information concerning the investigation into matters of considerable public interest. Often the media or a member of the Opposition will announce or seek confirmation that a police investigation is being conducted into some matter. There is only one approach to take and that is to decline to specifically confirm or deny or discuss whether there is such an investigation. To deny that a matter is being investigated at one time and to decline comment the next is as revealing as an affirmation. Of course, some investigations are notorious because of the actions or statements of others carrying out or otherwise involved in it. In such circumstances, the emphasis is on

refraining from discussion of what is known or being examined. This extends to disclosure of the findings and reports of the investigators. . . . .

On Wednesday April 27, 1983, the Honourable Member for Annapolis Valley-Hants, Mr. Nowlan, directed a classic example of this kind of question to the Honourable Luc Pepin, Minister of Transport, concerning an R.C.M. Police investigation in relation to Air Canada:

> " Would he, (the Minister of Transport) advise the House whether the present RCMP investigation into the rental of Air Canada's headquarters in Montreal results from alleged conspiracy to defraud between July 1, 1982 and November 14, 1982, concerning a $3.6 million secret sweetheart deal involving the Chairman of the Board of Air Canada and three other named individuals?"

The Attorney General's reply was a model, and is as follows:

> " It is a Department of Justice policy of long standing that unless someone is charged as a result of a police investigation such investigations are not considered to be a proper subject of public comment. This policy is dictated by considerations of ordinary fair play.
>
> If a charge is preferred the position is quite different. A person charged with an offence must be given an opportunity to defend himself before the Courts and in accordance with the rules of law. It is well known that

> in the course of investigating the commission of alleged offences peace officers receive innuendo and dubious allegations of wrongdoing which fall far short of what the law requires to launch criminal proceedings. Is that kind of thing to be made public? How and where is the individual who is the subject of innuendo and allegations of the kind just mentioned to defend himself or herself?
>
> To make reports prepared by R.C.M. Police investigators public in the absence of the preferring of charges could amount to nothing but character assassination and the abuse of police power. The unequivocal position of the Attorney General of Canada is that he has not the slightest intention of allowing R.C.M. Police reports to be used improperly and unfairly to the possible detriment of anyone in Canada."

The Honourable Robert Bonner, Attorney General in British Columbia in 1957, responded this way when pressured to release a police report concerning alleged corruption of a party colleague:

> " Police reports are not released because they are intended to bring all points of view together into some sort of summary and, in themselves, are not evidence. They are a narrative or they contain speculations or they contain suggestions. But for further lines of inquiry they are documents of the most confidential nature; otherwise, there would be no reputation safe in the country, because I'm sure that people are mentioned, much to their surprise, in a great variety of police reports and in ways which are totally innocent. So the presence of a police report is to be viewed as a confidential document and is not to be released for the benefit of one person or the salvation of a government or anything else."

. . . . Having dealt with the foregoing, this may also be a convenient place to say a word about public discussion of cases of issues before the courts and of legal advice given by the Attorneys General. In recent times there has been a disturbing trend by individuals and the media to discuss debate and editorialize on issues of fact or law which are contemporaneously being litigated in the courts.

The reason for refraining from such discussion is to avoid impairing, compromising or otherwise making the task and duty of the courts more difficult, to avoid the appearance of external influence and to avoid the contempt for the courts which so doing would reveal. It is also to protect the rights of the litigants. The Attorney General has therefore always scrupulously refrained from engaging in public discussion of cases while they are before the courts. For a discussion of the difficulties that can be encountered when this rule is breached, see **The Queen v. Vermette** (Supreme Court of Canada, May 26, 1988).

...

As far as legal advice is concerned, it has been the general policy of the Department of Justice to refrain from disclosing advice, or the nature of advice given. That is not to say that the fact that legal advice has been sought is not a proper point to be made in certain circumstances. Conventionally, the Department of Justice has treated legal advice given to another Minister or Department as being for that Minister or Department to deal with. There is a solicitor-client-like relationship between the Crown and its law officers and the authority to waive the privilege lies in the Crown, not necessarily in the holder or recipient of the advice. Legal advice is also protected under the **Access to Information Act**.

Reference can also be made to certain guidelines for production of papers and documents in the House of Commons made public by the Honourable Allan J. MacEachen (President of the Privy Council) in the House on March 15, 1973 on behalf of the government. Among papers and documents exempt from such production are legal opinions or advice provided for the use of the government. (See Commons Debates, March 15, 1973, pp.2260-65 and Appendix B.)

It is accordingly submitted that while this Commission of

Inquiry will no doubt wish to fully explore the nature and extent of the investigation made by the R.C.M.P. in the Reid matter, to be satisfied that in fact a proper investigation was made, the content of interviews, and internal discussions about the evidence are not, as a matter of important principle, proper matters for public disclosure in this or any other case.

Submitted on behalf of the Royal Canadian Mounted Police the 5th day of July, 1990.

BRIAN PURDY, Q.C.
COUNSEL